8789. By Mrs. KAHN: Petition of various residents of San Francisco, Calif., favoring passage of so-called antivivisection bill, House bill 7884; to the Committee on the District of Columbia.

8790. By Mr. KOPP: Petition of Hon. Edward G. Marquardt, of Burlington, Iowa, and many other citizens of Burlington, Iowa, urging the passage of antivivisection legislation; to the Committee on the District of Columbia.

8791. By Mr. LOZIER: Petition of 24 citizens of Chariton County, Mo., urging the enactment of certain pension legislation for the cash payment of adjusted-compensation certificates; to the Committee on Ways and Means.

8792. By Mr. PRALL: Petition of Langdon W. Smith, manager New York Tow Boat Exchange (Inc.), 11 Moore Street, New York City, urging the necessity of early appropriation of funds to be applied to the acquirement by purchase or construction of such vessels and for the support of additional personnel; to the Committee on Interstate and Foreign Commerce.

8793. Also, petition of citizens of the eleventh congressional district asking passage of House bill 7884, for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8794. By Mr. ROMJUE: Memorial of Missouri Pacific Post, No. 141, American Legion, St. Louis, Mo., asking for the immediate payment of adjusted-service certificates; to the Committee on Ways and Means.

8795. By Mr. SNELL: Petition of citizens of the State of New York, believing that, without blocking urgent domestic matters, the Senate can and should approve the World Court treaties; to the Committee on Foreign Affairs.

8796. By Mr. WATSON: Petition of residents of Montgomery County, Pa., favoring the passage of House bill 7884 prohibiting experiments on living dogs in the District of Columbia; to the Committee on the District of Columbia.

SENATE

FRIDAY, JANUARY 23, 1931

(Legislative day of Wednesday, January 21, 1931)

The Senate met at 11 o'clock a. m., on the expiration of the recess.

Mr. FESS. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Fess	King	Shortridge
Barkley	Fletcher	La Follette	Smith
Bingham	Frazier	McGill	Smoot
Black	George	McKellar	Steck
Blaine	Gillett	McMaster	Steiwer
Blease	Glass	McNary	Stephens
Borah	Goff	Metcalf	Swanson
Bratton	Goldsborough	Morrison	Thomas, Idaho
Brock	Gould	Morrow	Thomas, Okla.
Brookhart	Hale	Moses	Townsend
Broussard	Harris	Norbeck	Trammell
Bulkley	Harrison	Norris	Tydings
Capper	Hastings	Nye	Vandenberg
Caraway	Hatfield	Oddie	Wagner
Carey	Hawes	Partridge	Walcott
Connally	Hayden	Patterson	Walsh, Mass.
Copeland	Heflin	Phipps	Walsh, Mont.
Couzens	Howell	Pine	Waterman
Cutting	Johnson	Pittman	Watson
Dale	Jones	Reed	Wheeler
Davis	Kean	Robinson, Ark.	Williamson
Deneen	Kendrick	Schall	
Dill	Keyes	Sheppard	

Mr. WATSON. My colleague [Mr. ROBINSON] is necessarily detained from the Senate by illness in his family. I ask that this announcement stand for the day.

Mr. BROUSSARD. I wish to announce that my colleague the senior Senator from Louisiana [Mr. RANSDELL] is detained from the Senate by illness. I will let this announcement stand for the day.

The PRESIDENT pro tempore. Ninety Senators have answered to their names. There is a quorum present.

AMERICAN BRANCH FACTORIES ABROAD (S. DOC. NO. 258)

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of Commerce, transmitting, in response to Senate Resolution 128 (submitted by Mr. WALSH of Massachusetts and agreed to on October 5, 1929), a report on American branch factories abroad, together with the economic factors involved in the branch-factory movement, etc., which, with the accompanying report and papers, was referred to the Committee on Commerce and ordered to be printed, with illustrations.

PETITIONS AND MEMORIALS

Mr. JONES presented petitions numerously signed by sundry citizens of the State of Washington, praying for the passage of legislation for the exemption of dogs from vivisection in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. KEAN presented petitions numerously signed by sundry citizens of the State of New Jersey, praying for the passage of legislation for the exemption of dogs from vivisection in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. COPELAND presented a communication from Frederic R. Coudert, Esq., of New York, N. Y., transmitting a resolution of the committee on international arbitration, passed at a meeting of the New York State Bar Association in January, 1931, favoring the prompt ratification of the World Court protocols, which, with the accompanying paper, was referred to the Committee on Foreign Relations.

Mr. TYDINGS presented a petition of sundry citizens of Baltimore City, Md., praying for the ratification of the World Court protocols, which was referred to the Committee on Foreign Relations.

Mr. CAPPER presented petitions of sundry citizens of Lawrence and Wichita, both in the State of Kansas, praying for the ratification of the World Court protocols, which were referred to the Committee on Foreign Relations.

He also presented a resolution adopted by the Chamber of Commerce of Chanute, Kans., favoring the passage of legislation imposing a duty on crude petroleum, which was referred to the Committee on Finance.

He also presented petitions numerously signed by sundry citizens, being members of the Santa Fe Railway Employees' Club, of Arkansas, City, Kans., praying for the passage of legislation providing for Government regulation of motor-bus and truck traffic, which were referred to the Committee on Interstate Commerce.

Mr. BINGHAM presented petitions numerously signed by sundry citizens of the State of Connecticut, praying for the passage of legislation for the exemption of dogs from vivisection in the District of Columbia, which were referred to the Committee on the District of Columbia.

He also presented the petition of Stiles D. Woodruff Post, No. 1684, Veterans of Foreign Wars, of West Haven, Conn., praying for the passage of legislation for the immediate cash payment of adjusted-compensation certificates of World War veterans, which was referred to the Committee on Finance.

He also presented memorials of the Meriden Council of Catholic Women and members of St. Joseph's Church Society, of Meriden, in the State of Connecticut, protesting against the passage of the so-called equal-rights blanket amendment, being the joint resolution (S. J. Res. 52) proposing an amendment to the Constitution of the United States relative to equal rights for men and women, which were referred to the Committee on the Judiciary.

He also presented resolutions of the Women's Christian Temperance Unions of Essex, Middletown, Willimantic, and Warehouse Point, all in the State of Connecticut, favoring the passage of legislation for the Federal supervision of motion pictures, which were referred to the Committee on Interstate Commerce.

He also presented petitions of sundry citizens of Norwalk, Milford, Clinton, Greenwich, Niantic, New Haven, Stamford,

New Canaan, Sound Beach, Belle Haven, New London, Noank, and Waterford, and also the Men's Forum of the Congregational Church of Stafford Springs, and the League of Women Voters of New London County, all in the State of Connecticut, praying for the ratification of the World Court protocols, which were referred to the Committee on Foreign Relations.

He also presented resolutions adopted by the Men's Club of the First Church, of Windsor, and the New Haven section of the Council of Jewish Women, of New Haven, both in the State of Connecticut, favoring the prompt ratification of the World Court protocols, which were referred to the Committee on Foreign Relations.

PRICES OF BUTTER AND OLEOMARGARINE

Mr. CONNALLY. Mr. President, I ask to have printed in the RECORD a letter addressed to me by J. S. Abbott, secretary of the Institute of Margarine Manufacturers, with accompanying tables, and that the same be referred to the Committee on Finance.

There being no objection, the letter and tables were referred to the Committee on Finance and ordered to be printed in the RECORD, as follows:

WASHINGTON, D. C., *January 20, 1931.*

Hon. TOM CONNALLY,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Your attention is respectfully called to certain statements and communications concerning oleomargarine on pages 2419 and 2420 of the CONGRESSIONAL RECORD of January 17, 1931.

A reference was made to a recent oleomargarine ruling of the Commissioner of Internal Revenue. The statement was made that "during the few weeks this ruling has been in effect the wholesale price of butter has dropped from 45 cents a pound to as low as 26 cents a pound." The commissioner's ruling referred to was issued November 11, 1930. The price of butter has not dropped from 45 cents a pound to as low as 26 cents a pound during this period of time. According to the Bureau of Agricultural Economics, United States Department of Agriculture, the average wholesale price of butter on the New York market for the month of November was 36 cents a pound. The average price of the same butter on the same market January 17 was 28½ cents a pound.

The communications printed in the RECORD attributed this sudden slump in the price of butter to oleomargarine production and consumption, but the facts of the production of oleomargarine and butter and of the amount of butter in storage for each of the months of the years 1929 and 1930 do not warrant the conclusion that the production and consumption of margarine has caused this sudden slump in the price of butter.

There are inclosed herewith, for your information, the monthly margarine and butter production figures, the stocks of butter on hand, and the price of butter for the years 1929 and 1930. It will be seen that the production of butter during the last half of 1930 was less than it was during the same period in 1929. It will also be seen that the stocks of butter in storage were less in the latter half of 1930 than they were in 1929. Under such a condition the price of butter should have been higher in 1930 than in 1929.

It will also be seen that the production of margarine during the latter half of 1930 was much less than the production during the same period in 1929. This fact shows that the consumption of margarine has been less during the last few months than it was during the same period of time in 1929.

Figures are not yet available showing the production of margarine and butter for December of 1930, but it is known that the production of margarine for December of 1930 was less than for the same month in 1929.

The palm-oil ruling of the Commissioner of Internal Revenue has not yet appreciably affected the production or consumption of oleomargarine. There was no palm oil in this country available for use in the manufacture of margarine when the ruling was issued November 11. The main source of supply of this oil is Sumatra. Not sufficient time has elapsed since the issuance of the ruling in question to permit of the importation of any substantial amount of this oil. It is doubtful if there has been a million pounds of margarine made containing any palm oil since this ruling was issued.

The best lawyers connected with the various companies and corporations engaged in the manufacture of oleomargarine are of the opinion that the ruling of the Revenue Commissioner is sound. The best scientific authorities agree that palm oil is a wholesome food product. There is unquestionable scientific authority to the effect that it contains an efficient quantity of vitamine A.

There is also inclosed herewith a copy of our bulletin No. 13, entitled "Margarine Facts and Figures," which will give you full information on the composition and nature of this product.

Very truly yours,

INSTITUTE OF MARGARINE MANUFACTURERS,
J. S. ABBOTT, *Secretary.*

Margarine production

[Source: Bureau of Internal Revenue reports]

Months	1929	1930
	Pounds	*Pounds*
January	29,488,776	32,540,033
February	28,944,059	28,402,393
March	29,727,461	26,022,904
April	28,775,719	28,626,958
May	28,350,566	24,811,544
June	24,156,175	21,905,936
July	24,873,001	20,976,457
August	28,400,057	23,071,450
September	30,561,593	28,554,335
October	36,624,258	32,191,391
November	33,436,892	29,633,135
December	32,882,905	27,592,784
Total	356,221,462	324,329,321

Creamery-butter production

[Source: U. S. Department of Agriculture]

(Thousands of pounds)

Months	1929[1]	1930[2]
January	103,519	102,982
February	99,963	97,905
March	114,404	110,513
April	133,684	127,881
May	175,341	177,765
June	192,869	182,502
July	185,317	163,534
August	152,192	133,600
September	123,582	119,388
October	118,116	117,371
November	97,186	98,137
December	101,854	
Total	1,597,027	[3] 1,431,583

[1] Final revised figures.
[2] Estimated production.
[3] 11 months.

Creamery butter in storage

[Source: U. S. Department of Agriculture]

(Thousands of pounds)

Months	1929	1930
January	43,783	81,935
February	24,747	60,230
March	11,910	46,530
April	5,532	30,556
May	5,883	22,957
June	28,369	50,378
July	91,962	106,522
August	151,621	145,033
September	168,952	143,089
October	158,541	131,489
November	138,405	109,646
December	111,650	88,012

Creamery-butter prices

[Source: U. S. Department of Agriculture]

(New York market, 92 score)

Months	1929	1930
	Cents	*Cents*
January	47.94	36.63
February	49.89	35.70
March	48.45	37.27
April	45.35	38.53
May	43.54	34.85
June	43.54	32.93
July	42.42	35.24
August	43.45	38.92
September	46.22	39.77
October	45.56	39.98
November	42.70	36.09
December	41.10	32.18
Average	45.01	36.51

RELIEF OF DROUGHT-STRICKEN AREAS

Mr. BLACK. Mr. President, I send to the desk and ask to have read a telegram dated January 14, 1931, from Mr. John Barton Payne to the Hon. W. G. McAdoo and the reply of Mr. McAdoo thereto.

There being no objection, the telegrams were read, as follows:

WASHINGTON, D. C., *January 14, 1931.*

Hon. W. G. McADOO,
Trans-America Building, Los Angeles, Calif.:

Demand from suffering families throughout drought area for Red Cross relief has trebled during the last few days, making imperative immediate campaign for very large fund to meet this emergency situation existing in 21 States. Minimum $10,000,000 needed to prevent untold suffering and actual starvation. Reports just received from our workers in drought area tell pitiful stories of misery and acute need. Because of general economic situation fund raising may prove difficult, but believe Red Cross must not fail. Earnestly urge you do everything your power assist local chapter reach its quota.

JOHN BARTON PAYNE.

JANUARY 14, 1931.

Hon. JOHN BARTON PAYNE,
Chairman American Red Cross, Washington, D. C.:

Replying to your telegram in which you outline the untold suffering and actual starvation in 21 States and ask me to assist local chapter Red Cross here in reaching its quota, I shall gladly do everything in my power. While I approve every appeal to private generosity and charity, I do not believe response will be sufficiently speedy and ample to meet situation. Even if $10,000,000 is immediately raised it will go only a short way to relieve distress. It is estimated there are 5,000,000 people unemployed. If the Red Cross could relieve even 500,000, or 10 per cent of the whole, with food at the rate of 50 cents a day the entire $10,000,000 would be exhausted in 40 days. Additional aid is imperative. I can see no possible excuse for failure of the National Government to supplement private aid with an immediate appropriation of $50,000,000, or the authorization of the use of an equivalent amount of Farm Board wheat owned by the people for their salvation in the present emergency. Unless Washington is wholly misinformed about the situation, and your telegram indicates that it is not, its failure to enact prompt relief measures is as callous as it is incomprehensible.

W. G. McADOO.

REPORTS OF COMMITTEES

Mr. FRAZIER, from the Committee on Indian Affairs, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

S. 627. An act authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims (Rept. No. 1343);

S. 1430. An act authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims (Rept. No. 1344); and

S. 2445. An act to amend the act of February 12, 1925 (Public, No. 402, 68th Cong.), so as to permit the Cowlitz Tribe of Indians to file suit in the Court of Claims under said act (Rept. No. 1345).

Mr. WHEELER, from the Committee on Indian Affairs, to which was referred the bill (S. 873) conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Flathead Tribe or Nation of Indians of Montana may have against the United States, and for other purposes, reported it with amendments and submitted a report (No. 1347) thereon.

Mr. STEIWER, from the Committee on Indian Affairs, to which was referred the bill (S. 1371) authorizing the Southern Ute and the Ute Mountain Bands of Ute Indians, located in Utah, Colorado, and New Mexico, to sue in the Court of Claims, reported it without amendment and submitted a report (No. 1355) thereon.

Mr. CAPPER, from the Committee on the District of Columbia, to which was referred the bill (S. 5321) for the relief of Thomas F. Myers, reported it with an amendment and submitted a report (No. 1346) thereon.

Mr. FESS, from the Committee on the Library, to which was referred the bill (S. 5644) to amend the act entitled "An act to authorize and direct the survey, construction, and maintenance of a memorial highway to connect Mount Vernon, in the State of Virginia, with the Arlington Memorial Bridge across the Potomac River at Washington," approved May 23, 1928, as amended, reported it without amendment and submitted a report (No. 1348) thereon.

Mr. DALE, from the Committee on Commerce, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

S. 4944. An act to extend the times for commencing and completing the construction of a bridge across the Potomac River at or near Dahlgren, Va. (Rept. No. 1351);

H. R. 5661. An act authorizing the Sycamore Bridge Co., its successors and assigns, to construct, maintain, and operate a bridge across the Wabash River at or near Fleshers Ferry, Ind. (Rept. No. 1352);

H. R. 13532. An act to extend the time for the construction of the bridge across the Rio Grande at or near San Benito, Tex. (Rept. No. 1353); and

H. R. 13533. An act to extend the time for the construction of a bridge across the Rio Grande at or near Rio Grande City, Tex. (Rept. No. 1354).

Mr. BLACK, from the Committee on Military Affairs, to which was referred the bill (H. R. 14573) authorizing the attendance of the Army Band at the Confederate veterans' reunion to be held at Montgomery, Ala., reported it without amendment and submitted a report (N. 1349) thereon.

Mr. SHEPPARD, from the Committee on Military Affairs, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

H. R. 3313. An act to authorize the Secretary of War to acquire, free of cost to the United States, the tract of land known as Confederate Stockade Cemetery, situated on Johnstons Island, Sandusky Bay, Ohio, and for other purposes (Rept. No. 1356); and

H. R. 4501. An act to authorize funds for the construction of a building at Fort Sam Houston (Rept. No. 1357).

Mr. REED, from the Committee on Military Affairs, to which was referred the bill (S. 4682) to authorize the Chief of Engineers of the Army to enter into agreements with local governments adjacent to the District of Columbia for the use of water for purposes of fire fighting only, reported it with an amendment and submitted a report (No. 1358) thereon.

He also, from the same committee, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

S. 5715. An act to authorize the attendance of personnel and animals of the Regular Army as participants in the Tenth Olympic Games (Rept. No. 1359);

H. R. 233. An act to approve the action of the War Department in rendering relief to sufferers of the Mississippi River flood in 1927 (Rept. No. 1360); and

H. R. 9893. An act for the relief of Herman Lincoln Chatkoff (Rept. No. 1350).

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. FRAZIER:

A bill (S. 5828) to amend the act entitled "An act to quiet the title to lands within Pueblo Indian land grants, and for other purposes," approved June 7, 1924; to the Committee on Indian Affairs.

By Mr. WATSON (for Mr. ROBINSON of Indiana):

A bill (S. 5829) granting an increase of pension to Elmer E. Hickman (with accompanying papers); and

A bill (S. 5830) granting an increase of pension to Jemima McClure (with accompanying papers); to the Committee on Pensions.

By Mr. CAPPER:

A bill (S. 5832) to authorize the widening of Piney Branch Road NW., in the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

A bill (S. 5833) to amend an act entitled "An act to provide for the further development of agricultural extension work between the agricultural colleges in the several States receiving the benefits of the act entitled 'An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts,' approved July 2, 1862, and all acts supplementary thereto, and the United States Department of Agriculture," approved May 22, 1928 (U. S. C., Supp. III, title 7, secs. 343a, 343b); to the Committee on Agriculture and Forestry.

A bill (S. 5834) granting a pension to Bridget Striegel (with accompanying papers);

A bill (S. 5835) granting a pension to Charles E. Walters (with accompanying papers); and

A bill (S. 5836) granting a pension to Nellie L. Walters (with accompanying papers); to the Committee on Pensions.

By Mr. STECK:

A bill (S. 5837) granting an increase of pension to Louisa J. Lewis (with accompanying papers); to the Committee on Pensions.

By Mr. DENEEN:

A bill (S. 5838) for the relief of Rosemund Pauline Lowry; to the Committee on Claims.

By Mr. WALSH of Massachusetts:

A bill (S. 5839) for the relief of Elizabeth B. Dayton; and

A bill (S. 5840) for the relief of Dean Scott; to the Committee on Claims.

By Mr. BARKLEY:

A bill (S. 5841) granting an increase of pension to George Ann Yankee; to the Committee on Pensions.

By Mr. PATTERSON:

A bill (S. 5842) granting a pension to James Alfred Johnston (with accompanying papers); to the Committee on Pensions.

A bill (S. 5843) authorizing H. C. Brenner Realty & Finance Corporation, its successors and assigns, to construct, maintain, and operate a bridge across the Mississippi River at or near a point between Cherokee and Osage Streets, St. Louis, Mo. (with an accompanying paper); to the Committee on Commerce.

By Mr. TYDINGS:

A bill (S. 5844) granting a pension to Elsie Boone Peterson; to the Committee on Pensions.

A bill (S. 5845) to authorize the appointment of Master Sergt. John J. Grimes as a warrant officer, United States Army; to the Committee on Military Affairs.

By Mr. GOLDSBOROUGH:

A bill (S. 5846) granting an increase of pension to Kate Merritt Ramsay; to the Committee on Pensions.

By Mr. BULKLEY:

A bill (S. 5847) granting a pension to Grover C. Baker (with accompanying papers); to the Committee on Pensions.

REMOVAL OF RESTRICTIONS ON MEDICINAL LIQUORS

Mr. COPELAND. Mr. President, I introduce a bill for reference to the Committee on the Judiciary providing for the removal of certain restrictions on physicians under the Volstead Act. From my reading of the Wickersham report I could not find that they agreed on anything else except this, but they all seemed agreeable to this provision.

The PRESIDENT pro tempore. The bill will be received and referred to the Committee on the Judiciary.

The bill (S. 5831) to remove certain restrictions on physicians relative to medicinal liquors was read twice by its title and referred to the Committee on the Judiciary.

INVESTIGATION BY THE TARIFF COMMISSION

Mr. HAYDEN. Mr. President, I submit a Senate resolution, which I ask to have the clerk read, and I ask for its immediate consideration.

The PRESIDENT pro tempore. Is there objection?

There being no objection, the resolution (S. Res. 414) was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That the United States Tariff Commission is directed, under the authority conferred by section 336 of the tariff act of 1930, and for the purposes of that section, to investigate the differences in the costs of production of the following articles and of any like or similar foreign articles: Tomatoes in their natural state, peppers in their natural state, and green or unripe peas.

Mr. HAYDEN. I ask permission to have printed in the RECORD a telegram from the Nogales Chamber of Commerce relating to the subject matter of the resolution just agreed to.

There being no objection, the telegram was ordered to be printed in the RECORD, as follows:

NOGALES, ARIZ., *January 22, 1931.*

Senator CARL HAYDEN,
United States Senate, Washington, D. C.:

Referring again our telegram November 25 and your advice in reply that Tariff Commission was engaged in preliminary studies of cost data, also your telegram January 15 advising many schedules pending, which have priority status, we desire call your attention to Senate Document 215, Seventy-first Congress, special session, wherein the then chairman commission, under date July 9, submitted report showing peppers and tomatoes having priority status over other agricultural products. Understand pineapples and so many other products now engaging attention agricultural division that applications peppers and tomatoes so smothered with priority rights other products we can not even hope for relief possibly for years to come. The foregoing is interpretation placed on facts you have given us by vegetable interests here. Applications accepted by the commission as such covering peppers and tomatoes dated June 18 were forwarded Tariff Commission air mail by secretary West Coast Vegetable Association within 24 hours after new law became effective. In October and early November applications resubmitted on requested Tariff Commission to conform new rules, but we insist priority rights should not be sacrificed on account earnest effort to place carefully prepared statement of pertinent facts before commission in accordance with new rules. Can you not by Senate resolution secure priority status to which pepper and tomato applications are clearly entitled? Commission's experts have available far more data than necessary to report on preliminary investigation within 15 minutes showing tariff even 1 cent a pound on tomatoes and peppers can not be justified by facts derived from commission's extensive investigations and sworn statements submitted West Coast Vegetable Association on behalf this chamber and many other organizations. We hope and believe delay action on tomatoes and pepper applications due misunderstanding regarding date of original presentation to commission. We hope you will take steps immediately if necessary through Senate action to properly reinstate these applications.

NOGALES CHAMBER OF COMMERCE.

OPINION OF ATTORNEY GENERAL—FEDERAL POWER COMMISSION

Mr. WATSON. Mr. President, I ask permission to have printed in the RECORD an opinion of the Attorney General of the United States on the validity of the title of the Federal Power Commissioners to their offices.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The opinion is as follows:

(Original folio 62)

DEPARTMENT OF JUSTICE,
Washington, D. C., January 10, 1931.

SIR: You have asked my opinion on the legal aspects of the resolutions of the Senate, passed January 9, 1931, requesting you to return to the Senate the certified copies of the resolutions of the Senate expressing its consent to the appointment of George Otis Smith, Marcel Garsaud, and Claude L. Draper as members of the Federal Power Commission.

These men were nominated for these positions, and their nominations were considered by the Senate, which passed resolutions consenting to their appointment. Formal notification of this action was transmitted to you by the Secretary of the Senate, and in reliance thereon you made the appointments. The question is now presented whether, if you comply with the Senate's request and the Senate goes through the form of withdrawing its consent to the appointments, such action would have any legal effect or operate to remove or oust the appointees.

The nomination of Mr. Draper was confirmed on December 19, 1930, by the passage of a resolution in the following form:

"*Resolved*, That the Senate advise and consent to the appointment of the following-named persons to the offices named agreeably to their respective nominations: Federal Power Commission. * * * Claude L. Draper, of Wyoming, to be a member for the term expiring June 22, 1931."

The nominations of Mr. Smith and Mr. Garsaud were confirmed by the passage of a similar resolution on December 20, 1930. In the cases of Smith and Draper, after the votes were taken the Presiding Officer caused to be entered in the RECORD without objection a statement that—

"The Senate advises and consents to the nomination, and the President will be notified." (CONGRESSIONAL RECORD, December 19, 1930, p. 1101; CONGRESSIONAL RECORD, December 20, 1930, p. 1266.)

The Executive Journal of the Senate for December 19, 1930, in recording the pasage of the resolution confirming the nomination of Draper, contains the following:

"*Ordered*, That the foregoing resolution of confirmation be forwarded to the President of the United States."

There is a similar entry and order in the Executive Journal of December 20, 1930, relating to the Smith appointment. In the case of Garsaud the CONGRESSIONAL RECORD does not disclose a statement by the Presiding Officer that the President would be notified, but the Executive Journal of the Senate for December 20, 1930, contains, in addition to the resolution consenting to the appointment of Garsaud, the following:

"*Ordered*, That the foregoing resolution of confirmation be forwarded to the President of the United States."

On December 20, 1930, the Senate recessed until January 5, 1931. On December 20, 1930, the Secretary of the Senate duly notified you of the confirmation of the nomination of Draper, and on December 22, 1930, the Secretary of the Senate duly notified you of the confirmations of Smith and Garsaud. In each case the notice was in the regular form, delivered by messenger, and consisted of a copy of the resolution of the Senate certified by the Secretary

of the Senate. On December 22, 1930, in reliance upon these formal notifications that the Senate consented to the appointments, you appointed Smith, Garsaud, and Draper, who, on December 22, 1930, took the oath of office and entered upon the discharge of their duties. The appointments were effected by signing and delivering commissions to the appointees. On January 5, 1931, which was within two days of actual executive session of the Senate following the confirmation, motions to reconsider the nominations, accompanied by motions to request the return of the notifications, were made in the Senate and, having been passed on the 9th of January, are now before you.

The action of the Senate in such matters is governed by Rule XXXVIII of the Standing Rules of the Senate, of which paragraphs 3 and 4 are as follows:

"3. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion.

"4. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate."

It is provided in Article II of the Constitution that the President—

"shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; * * *."

This clause contemplates three steps. There is, first the nomination, which is a mere proposal. Next comes action by the Senate consenting or refusing to consent to the appointment. Finally, if the Senate consents to the appointment there follows the Executive act of appointment. It has long been recognized that the nomination and the appointment are different acts, and that the appoinment is not effected by the Senate's so-called confirmation of the nomination. After the Senate has consented to the appointment, the nominee is not entitled to the office until the consent is followed by the Executive appointment. After a nomination is sent to the Senate and has received the approval of that body, the President may, having changed his mind, decline to make the appointment. (See Marbury *v.* Madison, 1 Cranch. 137; 12 Op. Atty. Gen. 32, 42; 12 Op. Atty. Gen. 304, 306; 3 Willoughby on the Constitution, 2d Ed. (1929), sec. 987.)

As the Executive act of appointment follows the Senate's consent, the necessity for and the important function of a formal notification to the President expressing the Senate's consent becomes at once apparent.

Upon the foregoing facts, the ultimate question in this case is whether the appointments were made with the consent of the Senate. If the appointments were made without that consent, they were ineffective and invalid; but if made with the Senate's consent, the function of the Senate in respect of the appointments is ended.

The formal notifications of confirmations sent you by the Secretary of the Senate were sent by authority of the Senate before the expiration of the time allowed for reconsideration by paragraph 3 of Rule XXXVIII. While these orders for notification to the President did not explicitly state that the notifications should be sent forthwith, there seems to be no substantial dispute about the fact that the orders were so intended and that orders in that form for immediate notification of the President are in accordance with the traditional practice of the Senate, and that the Secretary of the Senate was justified in treating these orders as authority for immediate notification.

The contention has been made that although the Senate intended to and did convey to the President a formal notice of consent to the appointments unconditional in form, there was an implied qualification that the Senate might reconsider and withdraw the consent, and therefore the President should have withheld action until the expiration of the period allowed by Senate rules for reconsideration.

While the Senate rules are not very explicit, a reasonable and fair interpretation, with a view to reconciling all their provisions and in the light of established legislative and executive practice, leads only to the conclusion that the Senate intended to and did constitutionally consent to your making the appointments when you did. Reasonably construed, there is nothing about the rules which renders them obnoxious to any constitutional provision. One provision of these rules is that when a nomination is confirmed a motion for reconsideration may be made within either of the next two days of actual executive session. This must be read in connection with paragraph 4, which provides that nominations confirmed or rejected shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider or while such a motion is pending, "unless otherwise ordered by the Senate." That rule was intended to protect and preserve the power of the Senate to reconsider. It carries the inference that if notification of confirmation be transmitted to the President the Senate loses the power of reconsideration if the President should act on the notification by making an appointment before a request for return of the notification is delivered to him.

The rules also plainly recognize that before the time for reconsideration has expired or even while a motion for reconsideration is pending, the Senate may order an immediate notification of its consent to the appointment to be transmitted to the President. If the Senate makes no order directing immediate notification to be sent to the President, the notification would be withheld until the expiration of the time allowed for reconsideration; but where the Senate orders a notification to be sent forthwith and without waiting for the expiration of the reconsideration period, some purpose must be attributed to that action. Why order immediate notification to be sent to the President unless he is expected to act upon it? The only conceivable purpose in expediting the notice is to make it possible for the President to expedite the appointment. If ordering the notification of confirmation to be sent to the President in advance of the expiration of the time allowed by the rules for reconsideration is not intended as a formal announcement and expression of the Senate's consent to an immediate appointment, the advanced notification would have no purpose whatever. The rules provide in such case for no second notification, and if the first one be not effective so that the President may rely on it, he never will receive a notification of final consent to the appointment. The President would never be able to rely on any notification and would be obliged to inform himself as best he might as to whether the Senate had finally consented to the appointment.

It has been suggested that even though a notification of the confirmation has been sent by the Senate to the President in advance of the expiration of the period allowed for reconsideration, it is subject to recall at the pleasure of the Senate without regard to what the President has done in reliance on it, and that this is implied in the provision in paragraph 3 of Rule XXXVIII to the effect that where a motion for reconsideration is made it shall be accompanied by a motion to request the President to return the notification. The fallacy of that argument rests in the assumption that paragraph 3 contemplates that the notification is under all circumstances subject to recall during the reconsideration period. This rule assumes that a request for a return of the notification may be effective if it reaches the President before he has made the appointment. In that case he would, no doubt, comply with the request. It also assumes that where nominations have been rejected and the President consequently makes no appointments, there is no difficulty about recalling the notification. It is consistent, however, with the idea that the request for return of the notification will be too late if it fails to reach the President before the appointment is made. Senate practice lends weight to these conclusions.

The position that the Senate did consent that these appointments be immediately made, subject to revocation on reconsideration by the Senate, is wholly untenable. That would allow the Senate to encroach upon executive functions by removing an officer within a limited time after his appointment because of dissatisfaction with his official acts. Any rule that provided for such a course would be void. The consent required by the Constitution is a consent absolute and irrevocable when acted on by the Executive. With such a condition attached it would be a case, not of a void condition but of an invalid appointment. Either these appointments are valid because made with the unqualified consent of the Senate or they are void. There is no middle ground.

Ordinarily the Senate is the judge of its own rules, but where it makes a retroactive interpretation applicable to past transactions which involve action of the executive branch of the Government, the question becomes a legal one and open to judicial inquiry. I can not escape the conclusion that, fairly construed, the rules of the Senate contemplate that where it orders notification of the Senate's consent to an appointment to be forthwith transmitted to the President without waiting for the expiration of the period for reconsideration, that action is intended as a deliberate expression to the President of the Senate's unqualified consent to the immediate appointment, and that it amounts to a decision by the Senate, not under suspension of its rules but in accordance with them, to place reconsideration beyond its power if the President should act and make the appointment before a request of the Senate for a return of the papers reaches him.

I am of the opinion, therefore, that what transpired in this case amounted to an expression by the Senate of its consent to these appointments and that the appointments were constitutionally made and became effective; and that the return of the papers to the Senate would serve no lawful purpose because no action which the Senate could now take would disturb or operate to revoke the appointments.

Respectfully,

WILLIAM D. MITCHELL,
Attorney General.

The PRESIDENT,
The White House.

SALE OF POWER AT WILSON DAM—SUSPENSION OF THE RULE

Mr. BLACK. Mr. President, I submit a notice to suspend a rule, in reference to the War Department appropriation bill, which may or may not be required. I desire to have it read.

The notice was read, as follows:

(By Mr. BLACK)

Pursuant to the provisions of Rule XL of the Standing Rules of the Senate, I hereby give notice in writing that I shall hereafter move to suspend paragraph 3 of Rule XVI for the purpose of proposing to the bill (H. R. 15593) making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1932, and for other purposes, when the same is taken up for consideration, the following amendment, namely: At the proper place in the bill insert the following:

"The Secretary of War is hereby directed to give a preference in the sale of electric power generated at the hydro plant or steam plant at Wilson Dam to States, counties, municipalities, or cooperative associations operated without profit. The Secretary of War is further directed to make contracts with such States, counties, municipalities, or cooperative associations for as long a period as 30 years, but any contract made with a person or corporation engaged in the business of selling and distributing power for a profit shall contain a provision authorizing the cancellation of the contract with such power company, and the withdrawal of power sold to it, upon six months' notice in writing: *Provided*, such power is needed for sale to States, counties, municipalities, or cooperative associations not operated for profit or provided such power is needed for the manufacture of fertilizer or fertilizing ingredients by the Government nitrate plants at Muscle Shoals, or new plants erected by the Government or a lessee of the Government."

Mr. BLACK. I submit the amendment incorporated in the notice, which I ask may be printed and referred to the Committee on Appropriations.

The PRESIDENT pro tempore. The amendment will be referred to the Committee on Appropriations and printed.

SURVEY OF INDIAN CONDITIONS

Mr. FRAZIER submitted the following resolution (S. Res. 416), which, with the accompanying paper, was referred to the Committee on Indian Affairs:

Resolved, That Senate Resolution No. 79, Seventieth Congress, agreed to February 1, 1928, authorizing the Committee on Indian Affairs to make a general survey of Indian conditions, hereby is continued in full force and effect until the expiration of the Seventy-second Congress and the limit of expenditures to be made under authority of such resolution is hereby increased by $30,000.

LANGMUIR HIGH-VACUUM PATENT CASE

Mr. DILL. Mr. President, I ask unanimous consent to have printed in the RECORD the opinion of the Circuit Court of Appeals for the Third Circuit in the Langmuir high-vacuum patent case.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

THE CIRCUIT COURT JUDGES' OPINIONS IN THE LANGMUIR HIGH-VACUUM PATENT CASE

There is now before the United States Supreme Court for acceptance, an appeal in a patent case of the widest importance to American industry—Langmuir high-vacuum tube patent. (No. 1558436.)

The Circuit Court of Appeals for the Third Circuit has, by a divided opinion of two to one, reversed the United States District Court which had held this patent to be invalid. The appeal from the circuit court's divided verdict is now before the Supreme Court for acceptance.

This case becomes of tremendous significance because of the wide variety of applications of high-vacuum tubes in radio, national defense, sound pictures, broadcasting, industrial control, telephony, musical instruments, power transmission, aviation, surgery and therapeutics, metallurgy, etc., and the control it will accordingly effect on great future industries.

As has been pointed out by commentators on both sides, it is very important to American commerce that on the highest possible court authority, the fairest possible adjudication be reached at the earliest possible time, based upon a complete study of the facts. The opinions handed down by the circuit court justices, two supporting and one denying validity of the patent, present in themselves a thorough analysis of the technical aspects of the art surrounding the patent, and constitute real contributions to the literature of the subject. They are quoted in part in the following:

OPINIONS OF JUDGES BUFFINGTON AND DAVIS

"In litigation over a patent of great commercial value, the case, on reargument, narrowed to the simple question of the patent paternity of what is known commercially as the Langmuir tube. The court below held the tube had no patent paternity and to that question we now address ourselves.

"Laying aside the technical language and scientific discussion and confining ourselves to simple statement, the Langmuir tube is a tube in which the gaseous conductor incident to a Fleming valve and a De Forest audion is dispensed with and a vacuum substituted therefor.

"Turning to the question on which the validity of the patent depends, we inquire as to its usefulness, for the constitutional power to create the monopoly of a patent in that regard conditioned 'to promote the progress of * * * useful arts' and the congressional enactment in pursuance of the Constitution is that 'any person who has * * * discovered any new and useful,' etc. For in the final analysis use, usefulness, is the acid test, the sine qua non of patent grant.

"The unusual degree of usefulness of the tube may be assumed. The defendant (De Forest Radio Co.) by its use evidences its usefulness and has adopted it and ceased making 'gaseous type tubes.' The court below described the tube—and we agree with its estimate—as an agency which 'because of its stability, reproducibility, and power has made possible radio broadcasting, modern radio reception, and long-distance telephony.'

"Seeing we are dealing with a progressive step which, next to the telegraph, the telephone, and the wireless, is probably one of the most far-reaching and beneficent in human progress, there can be no question of a nongaseous vacuum tube's usefulness. Such being the case, is it novel? The simple fact is that we see such a tube in universal use to-day. Indeed, the fact that a nongaseous vacuum tube makes possible the present improved practice shows that such practice did not exist before the Langmuir tube, and that no other device or devices, all important as they may have been in their spheres, did either singly or collectively produce the present practice. The Patent Office recognized that. In the opinion of the board of examiners they found, in affirming the decision of the examiner of interferences, that 'Langmuir was the first to conceive and the first to reduce.'

Langmuir's radical departure

"Now, as it seems to us, the art, although it did not exactly know how the gas in gaseous tubes acted and just why it was able to so conduct, nevertheless continued to use it and regarded it as the indispensable means of conducting. As against this firmly entrenched teaching and practice of the art, Langmuir's suggestion of eliminating gas as a conductor was a radical change, and even more so was not the substitution of some other tangible conductor, but the disclosure of supplanting the tangible gaseous conductor by the intangible conductor of a vacuum. Vacuums, per se, were, of course, known.

De Forest's audion and Fleming's valve were equally known, but the suggestion of dispensing with gas and utilizing a vacuum between the two was as novel in practice as it was unlooked for in result. That Langmuir's use of high vacua did not appeal to so practical and eminent a scientist as De Forest was evidenced by his statement, heretofore quoted, made even after Langmuir had made known his process publicly—"I believe, however, that Doctor Langmuir has, by working into these extremely high vacua and the high potentials necessitated thereby, pursued the less promising of two paths of research." If it was an obvious thing, for the ordinary art to do away with gas and substitute high vacua therefor, surely such an extraordinary mind in that art as De Forest, when confronted with the substitution, would not have pronounced high vacua a mistaken path.

It is contended, and the court below so held, that all that Langmuir did was simply to vary in degree the prior use of the vacuum and that a mere difference in degree does not constitute invention. Assuming the correctness of this general proposition, we think it is not applicable to the present case. In considering change in degree, the test is not the quantum or minimum of change made but the quantum of change in function and result which such change, great or small, effects. A great change may effect but a slight change in function and result, while a slight change may effect a radical difference in function and effect. The effect, the practical progress and use in the arts, are the aim and end of patent grants; and where great results follow a change, the slightness of the change tends to emphasize and make all the more remarkable, unexpected, and inventive the disproportionate result the slight change effects. A vacuum, or indeed change of vacuum, isolated and standing by itself, is not the Langmuir invention, but it is a working tube in which all the elements, cathode, plate, vacuum, so coordinate and interwork that current flow is not affected by gas. We say not affected by gas because of necessity an absolute vacuum is an impossibility, but the degree of vacuum is such the current flow is no longer objectionably affected by gas. Just what the degree of vacuum shall be is dependent on several elements and, as stated in the patent, can not be exactly stated. In that regard the specification says: "The evacuation of the device should be preferably carried to a pressure as low as a few hundredths of a micron, or even lower, but no definite limits can be assigned."

JUDGE WOOLLEY'S DISSENTING OPINION

I am constrained to dissent from the judgment of the court holding the Langmuir Patent No. 1558436 valid. I have the same trouble that other tribunals have had throughout the 12 years of the patent prosecution and 5 years of the patent's life in finding precisely what Langmuir invented. My trouble, like that of the others, has been increased by the difficulty which attorneys for the patent have had in defining the invention and by the difference between their definitions and the claims of the patent.

The invention relates to an electron discharge device comprising the familiar vacuum tube in which the customary electric current is carried by electrons and relates particularly to a vacuum space so free from gases as to avoid ionization. If the parts and principles of the mechanical construction were new and the gas evacuation old, there might be invention; if the structure were old and the gas evacuation were new, there might be invention. But the essential parts and principles of the mechanism were old, and high vacuum in the tube also was old.

Importance of the patent

The De Forest patent expired in 1925, the year in which the patent in suit—issued to Langmuir, assignor to the General Electric Co. The Langmuir patent now completely covers the field previously occupied by the audion of the expired De Forest patent, and will, on the decree of this court, continue to cover it for 12 years more; hence the importance of this litigation.

When the patent came into litigation in this case in the District Court of the United States for the District of Delaware the learned trial judge, having trouble with the claims, endeavored to get a definition of the invention, asking time and again, as did this court on appeal: If not high vacuum, what is the invention? An answer to this question seemingly had its difficulties. The plaintiff could not say that the invention was high vacuum alone or in combination with Fleming and De Forest parts alone. It was forced to admit that the Langmuir device included all these old elements but claimed it included "something else."

"The Langmuir invention is a coordination of elements having a new functional relation between the various factors, producing a new result. It is not a mattter merely of maintaining a certain vacuum, far less of producing a certain vacuum which will be destroyed the moment the tube begins to operate. It involves primarily a relation between the shape, size, and space relation or 'geometry' of the parts of the tube and nature and pressure of the gas therein contained, coordinated, and adjusted with respect to the conditions of the electric circuit."

The court did not adopt the definition of coordinating elements with functional relations, but, stating that a nongaseous electron discharge device did not exist before Langmuir, found the invention to reside in his producing a nongaseous tube in place of a gaseous tube of the prior art, or in other words in substituting a high vacuum for a low vacuum, the very thing the plaintiff was forced to avoid in its definition because it was old. I agree with the court's succinct definition of the invention, but as the invention so defined was old I can not agree to hold a patent for it valid.

Langmuir must have known that a nongaseous tube was old for otherwise, if he had believed he was the first to conceive and make one he could and doubtless would have claimed it in a half dozen words, "a nongaseous discharge tube," or "an electrical discharge device with a high vacuum tube."

Prior publications and patents contradict, I think, the court's holding that Langmuir was the first to make and invent a nongaseous tube. They are so numerous that it would not be permissible to quote them in an opinion.

On these references I stand; and on them I would hold the patent invalid for want of invention.

Radio—Product of many inventors

Much litigation in respect to the radio art has drifted to this circuit. Oddly enough, in every case the plaintiff has claimed for his invention the whole credit for its growth. I am satisfied from the number of cases we have heard that the whole credit for the amazing advance of the radio art can not be given to any one invention or even to a few of them. In truth, the art is the product of innumerable impulses. At one time there were 7,000 applicants for patents pending in the radio section of the Patent Office.

Important and, indeed, great as some of these inventions were, no one of them is entitled to all credit for the what has been accomplished in this great art, for the art has been impelled forwarded by hundreds of inventors and thousands of skilled workers. What Langmuir claims have done—procured pure electron discharge above ionization voltages in tubes of the De Forest type—appears to me to be the natural growth of the art, begun by others before Langmuir and by them reduced to practice with means then available, and developed to their later perfection.

I thought after the argument, and still think, the Langmuir patent invalid because of lack of invention and prior use. If I am wrong and the patent really involves invention, then again, I think it not valid for, as I read the evidence, Langmuir was not the first and original inventor. On this point I refer and subscribe to the opinion of Judge Morris—that, if invention, Arnold was the first and original inventor.

TAXES ON RADIO SETS

Mr. DILL. Mr. President, I ask to have printed in the RECORD the opinion of the District Court of the United States for the Eastern District of South Carolina in the case of Station WBT (Inc.), plaintiff, against Joseph M. Poulnot, sheriff of Charleston County, and Walter G. Query, John P. Derham, and Frank G. Robinson, constituting the South Carolina Tax Commission, defendants.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, IN EQUITY

STATION WBT (INC.), A CORPORATION UNDER THE LAWS OF THE STATE OF NEW YORK, PLAINTIFF, *v.* JOSEPH M. POULNOT, SHERIFF OF CHARLESTON COUNTY, AND WALTER G. QUERY, JOHN P. DERHAM, AND FRANK G. ROBINSON, CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION, DEFENDANTS. DOCKET NO. 509. OPINION. (JANUARY 17, 1931)

Ernest F. Cochran, district judge:

The plaintiff brought suit to enjoin the defendants from enforcing collection of taxes on radio sets under the provisions of the act of the Legislature of South Carolina of March 31, 1930. An application has been made for an interlocutory injunction before a court of three judges, in accordance with the provisions of section 266, Judicial Code (U. S. C., title 28, sec. 381). The facts as developed at the hearing of the application are substantially as follows:

The plaintiff is a corporation under the laws of the State of New York; has its principal place of business at Charlotte, N. C.; and owns and operates a broadcasting station at Charlotte under license of the Federal Radio Commission. The defendants are all residents and citizens of South Carolina. Plaintiff's plant or operating system is roughly valued at about $100,000. It has a "normal audience" embraced within a circle determined by a radius of 200 miles from the city of Charlotte that includes practically all of the State of South Carolina. Its gross annual income is about $125,000, primarily from advertisers. Of this about $5,000 is from advertisers seeking to reach a South Carolina audience exclusively. About $105,000 is from advertisers seeking to reach the entire "normal audience" including the South Carolina audience, and about $15,000 is from advertisers seeking to reach an audience exclusive of South Carolina. Approximately one-third of its "normal audience" is in South Carolina. The value of the right to communicate with the South Carolina portion of its audience is placed by the plaintiff at $50,000. There are more than 50,000 radio-receiving sets in South Carolina in actual use and operation.

The proofs show that the art of radio broadcasting consists in transmitting electromagnetic waves set in motion by electricity at a station and passing through space to numerous receiving instruments. The essential elements in such communications consist of the transmitter, the connecting medium or "ether," and the receiving mechanism. The electromagnetic waves move at the speed of light, and it is impracticable to confine them, at least in the present state of the art, within State lines. The receiving mechanism or receiving set detects the oncoming radio waves, and amplifies them into audible sound. All radio communication, anywhere in the United States, travels actually or potentially across State lines, and even if certain radio electric wave energy, through an accident or otherwise, should lose its force before crossing the State line, yet it potentially interferes with other radio communication passing interstate. Congress has assumed control of all communications by radio, acting through the Federal Radio Commission, which actively and continuously supervises all such communication. The South Carolina radio tax act was approved March 31, 1930, and took effect immediately upon its approval. For several months the tax commission made no serious effort to enforce the tax, merely receiving such payments as were voluntarily made, without molesting those persons who elected to stand on their constitutional rights, or who otherwise failed or refused to pay the tax. But the commission then determined upon a policy of drastically enforcing the act and putting into effect the penalizing provisions; and thereupon the plaintiff brought this suit, alleging that the tax imposed by the act was a burden upon interstate commerce and in conflict with the Constitution of the United States. The act provides that for the privilege of owning or operating a radio receiving set, an annual license tax ranging from $1 to $2.50, varying with the value of the set, shall be paid. Every person who fails or refuses to make the return or to pay the tax required by the act is subject to a penalty of $50. The taxes imposed are made a first preferred lien upon every receiving set and the commission is authorized to issue execution, under which the set may be levied upon and sold in the manner provided for delinquent taxes. All persons engaged in the sale, barter, or exchange of radio receiving sets are required to keep a record thereof, and for failure to keep such record are subject to a penalty of not more than $100 or imprisonment of not more than 30 days. The act provides that the proceeds of the taxes and penalties shall be used for the buildings, equipment, and permanent improvement of the State Tuberculosis Sanatorium. The act makes no provision for the recovery of the taxes upon payment thereof, nor is there any other provision of South Carolina law which authorizes a recovery.

The first question is whether this court has jurisdiction of the cause. There exists diversity of citizenship and the case also arises under the Constitution of the United States. The only question, therefore, is whether the amount in controversy exceeds $3,000.

The bill seeks an injunction to protect the right of the plaintiff to engage in interstate commerce without unlawful interference. That right is the subject of the controversy. In such cases the jurisdictional amount is not to be tested by the mere immediate pecuniary damage resulting from the acts complained of, but by value of the business to be protected and the wrong to the property rights, which the complainant seeks to have recognized and enforced.

Hunt *v.* N. Y. Cotton Exchange (205 U. S. 322).
Bitterman *v.* L. & N. R. R. (207 U. S. 205).

Berryman *v.* Whitman College (222 U. S. 334).
Glenwood, etc., *v.* Mutual, etc. (239 U. S. 121).
Western A. & R. R. *v.* R. R. Comn. of Ga. (261 U. S. 264).
Packard *v.* Banton (264 U. S. 140).
Cf. Scott *v.* Donald (165 U. S. 107).

When we consider the value of the plaintiff's plant, its gross annual income, the ratio of its South Carolina audience to its "normal audience," and the amount received from advertisers seeking to reach the South Carolina audience exclusively we have no difficulty in reaching the conclusion that the value of the plaintiff's right to communicate with the South Carolina portion of its audience is in excess of $3,000. (Cf. Berryman *v.* Whitman College, supra. See also the other decisions cited above.)

The next question is whether the plaintiff has any standing to attack the constitutionality of the act in question. No tax is laid upon the plaintiff or upon its business or any property owned by it. The tax is laid upon receiving sets owned by the various persons who compose a part of plaintiff's audience, and who may be in a sense styled the plaintiff's customers. It is true that the constitutionality of an act can not be assailed by one who is not directly affected by the act; and, as a general rule, no person in any business has such an interest in possible customers as to enable him to restrain the exercise of proper power of the State upon the ground that he will be deprived of patronage. But there are numerous decisions of the Supreme Court which lead, in our opinion, inevitably to the conclusion that the plaintiff may maintain its action if the tax in question is found to be unconstitutional.

Hammer against Dagenhart arose under the Federal Child Labor law. Congress, under its power to regulate interstate commerce, undertook to forbid the shipment in interstate commerce of the products of child labor. The bill was filed by a father in his own behalf, and as next friend of two minor sons, employees in a cotton mill. The Supreme Court held that the act was unconstitutional, and affirmed the decree of the district court enjoining its enforcement. It is true that in that case the point whether the plaintiffs were in a position to attack the law was not directly decided or considered. But it is hardly likely that the Supreme Court would have decided a law unconstitutional without considering the question of the right of the plaintiffs to attack it, if there was any serious doubt about such right. The case therefore is very persuasive for the view that they did have the right. (Hammer *v.* Dagenhart, 247 U. S. 251.)

Pierce against Society of Sisters arose under the Oregon compulsory education act, which with certain exemptions, required every parent, etc., to send children of certain ages to the public schools. The plaintiffs in those cases were corporations engaged in education, with property rights and interests which were threatened by the enforcement of the act. The Supreme Court held that the act was unconstitutional and that the plantiffs' business and property were threatened with destruction through the unwarranted compulsion which was exercised by the State authorities over the parent and prospective patrons of their schools; and their rights would be protected by injunction. (Pierce *v.* Society of Sisters, 268 U. S. 510.)

Buchanan against Warley involved an ordinance forbidding colored persons to occupy houses in a block occupied in the major portion by whites. A white man contracted with a colored man to sell him property within the inhibited zone, with a clause relieving the purchaser if it should prove illegal to occupy the property. The white man sued to enforce the contract, claiming that the ordinance was unconstitutional. Objection was made that the denial of the constitutional right involved only the rights of colored persons; but the Supreme Court held that the property rights of the white man were directly and necessarily involved, and the ordinance was declared unconstitutional. (Buchanan *v.* Warley, 245 U. S. 60.)

In Truax *v.* Raich there was involved the constitutionality of an act of Arizona prohibiting the employment of more than a certain percentage of aliens by an employer employing five or more persons. The plaintiff was informed by his employer that by reason of the requirements of the law and because of fear of the penalties which would be incurred in case of its violation, he would discharge him from service upon the law going into effect; and for that reason alone, his services being perfectly satisfactory. The alien brought an action against the State officers to restrain the enforcement of the statute, joining his employer as a party defendant. It was urged that the defendant could not sue, save to redress his own grievances, that the servant could not complain for the master, and that it was the master who was subject to prosecution and not the plaintiff. The Supreme Court said, however:

"The act undertakes to operate directly upon the employer of aliens and if enforced would compel the employer to discharge a sufficient number of his employees to bring the alien quota within the prescribed limit. It sufficiently appears that the discharge of the complainant will be solely for the purpose of meeting the requirements of the act and avoiding threatened prosecution under its provisions. It is, therefore, idle to call the injury indirect or remote. It is also entirely clear that unless the enforcement of the act is restrained the complainant will have no adequate remedy, and hence we think that the case falls within the class in which, if the unconstitutionality of the act is shown, equitable relief may be had."

The court therefore held that the plaintiff could maintain an action and sustained his contention that the act was unconstitutional. (Truax *v.* Raich, 239 U. S. 33.)

In Savage against Jones the plaintiff manufactured in Minnesota certain products which he sold and shipped to retailers in Indiana, where the product was sold by them in the original package. A statute of Indiana required of every person selling or offering such products for sale in that State to file certain statements and certificates; that there should be affixed to every package a label of the contents, etc., with penalties for noncompliance. The plaintiff brought his suit against the State officers to enjoin them from prosecuting the persons selling his products. The position was taken that the plaintiff showed no ground of equitable relief, as no action was threatened against him. The statute was held constitutional, but the right of the plaintiff as having a standing in the court of equity was sustained. The court held that the sale and shipment by plaintiff to his purchasers in Indiana constituted interstate commerce in the freedom of which from any unconstitutional burden, he had a direct interest, and that the protection accorded to this commerce by the Federal Constitution extended to the sale by the receiver of the goods in the original packages; and that an attack upon this right of the importing purchasers to sell in the original packages bought from the plaintiff not only would be to their prejudice, but inevitably would inflict injury upon the plaintiff by reducing his interstate sales; a result to be avoided only by compliance with the act by filing the statement and affixing the labels it requires. The court concluded that the plaintiff was entitled to relief against enforcement, if the demands were illegal. (Savage *v.* Jones, 225 U. S. 501.)

We have been unable to distinguish the case at bar in principle from the cases cited. Here the plaintiff was engaged in interstate commerce. The value of its business is impaired, and if the amount of the tax should be increased may be destroyed, by unlawful exactions made upon the owners of radio receiving sets. The power to tax is the power to destroy. If the State can levy a small tax, it can lay a tax which would be prohibitive. The direct and necessary result of the imposition of the tax in question is to impair the value of the plaintiff's business and a heavier tax might destroy it entirely. We are constrained to hold, therefore, that the plaintiff's property rights are directly affected by the tax in question, and it has a standing in a court of equity to protect its right.

It has not been contended that the plaintiff has any adequate remedy at law. It is perfectly apparent, that no matter how much the tax may impair the plaintiff's property rights, or even if its business should be utterly destroyed, it would have no remedy at law for damages or otherwise. The law makes no provision by which anyone can pay the tax and recover it. But even if it did provide that the owner might pay the tax and recover it, nevertheless it would be utterly impracticable for the plaintiff to arrange with the various owners of more than 50,000 radio sets and pay the tax for them. Such a course would involve such a multiplicity of suits and be so enormously expensive as to be practically prohibitive. But it is unnecessary to pursue this branch of the subject any further. There is no remedy at law provided for any person whose rights may be violated by this act.

There can be no doubt that communications by radio constitute interstate commerce. It has been so held by numerous courts, and the decisions of the Supreme Court of the United States defining interstate commerce necessarily lead to that conclusion.

Gibbons *v.* Ogden (9 Wheat. 1, 189).
Pensacola Telephone Co. *v.* Western Union (96 U. S. 1).
Blumenstock *v.* Curtis (252 U. S. 436).
Western Union *v.* Speight (254 U. S. 17).
Whitehurst *v.* Grimes (21 Fed. (2d) 787).
General Electric *v.* Federal Radio Commission (31 Fed. (2d) 630).
United States *v.* American Bond, etc. (31 Fed. (2d) 448, 454).
Technical Radio Laboratory *v.* Federal Radio Commission (36 Fed. (2d) 111).
City of New York *v.* Federal Radio Commission (36 Fed. (2d) 115).

The plaintiff contends that all radio communication is necessarily interstate, and in the present state of the art this appears to be correct. However, it is not inconceivable that radio communication may in the future be so perfected that it may be confined strictly intrastate, but we do not consider it necessary to make any ruling upon that point now. Certainly under the facts of the present case, the plaintiff, through its broadcasting plant, is engaged in interstate commerce. The receiving sets in South Carolina are essential to the reception of the communications by the South Carolina audience. In other words, the receiving sets are absolutely essential instrumentalities of the interstate commerce in which the plaintiff is engaged.

The only question remaining is whether the State has the right to lay a tax upon these instruments of interstate commerce. Under the numerous decisions of the Supreme Court there can be only one answer. Those decisions hold that Congress has the power to regulate interstate commerce; that that power is necessarily exclusive whenever the subjects are national in their character or admit only of one uniform system or plan of regulation; and that where the power of Congress to regulate is exclusive, the failure to regulate indicates the will that it shall be left free from any restrictions or impositions; and any regulation of the subject by a State, except in matters of local concern, is repugnant to such freedom, and that no State can compel a party, individual, or corporation to pay for the privilege of engaging in interstate commerce, and that a State has no power to lay any burden in any

form, by taxation or otherwise, upon interstate commerce or its instrumentalities.

Robbins *v.* Shelby, etc. (120 U. S. 489).
Lyng *v.* Michigan (135 U. S. 161).
Crutcher *v.* Kentucky (141 U. S. 47).
Atlantic, etc., *v.* Philadelphia (190 U. S. 160).
Minnesota Rate Cases (230 U. S. 352, 396, 397).
Barrett *v.* State of New York (232 U. S. 14).
Sault Ste. Marie *v.* International Transit Co. (234 U. S. 335).
Lemke *v.* Farmers, etc., Co. (258 U. S. 50).
Real Silk *v.* Portland (268 U. S. 325).

The tax in question can not be sustained under those cases which hold that the State has a right to impose an ordinary property tax upon property having a situs within its territory and employed in interstate commerce; for here the tax is not a general property tax, but a license tax for the privilege of using an instrument of interstate commerce. Nor can it be sustained as a matter of local regulation, for the subject is national and admits only of one uniform system or plan of regulation. Nor can it be sustained as a police regulation with an incidental tax to pay the expenses of the regulation, for it has no elements of police and, moreover, the tax is frankly devoted to the uses of a State institution. Nor can it be sustained as an aid of interstate commerce, nor on the ground that its effect is merely incidental. The tax here is directly laid upon a necessary instrument of interstate commerce, imposes a burden upon that commerce, and the act of the legislature imposing it is therefore in conflict with the Constitution of the United States, and null and void.

Interlocutory injunction granted.

We concur in the foregoing opinion.

JOHN J. PARKER,
United States Circuit Judge.
ERNEST F. COCHRAN,
United States District Judge.
J. LYLES GLENN,
United States District Judge.

CONCENTRATION OF POPULATION

Mr. HEFLIN. Mr. President, I ask unanimous consent to have printed in the RECORD a splendid and timely article on the concentration of population and its relation to agricultural land, food products, and cheap overland transportation, by Hon. Martin Dodge, formerly Director of the United States Office of Public Roads.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The article is as follows:

THE CONCENTRATION OF POPULATION AND ITS RELATION TO AGRICULTURAL LAND, FOOD PRODUCTS, AND CHEAP OVERLAND TRANSPORTATION

(By Hon. Martin Dodge, formerly Director of the United States Office of Public Roads)

The concentration of wealth and population in great cities and centers of industry is the most important thing that has happened within the last generation or so. In all the history of the past the people followed the food, but now for the first time in the history of civilization the food is following the people. And it is by reason of this very remarkable and unexpected change that we have the so-called universal depression, the like of which never existed before. Formerly, most persons employed themselves and directed their own labor, but now this method is reversed in all the great cities and the majority of persons are employed by others—generally by corporations, municipalities, or governments. It is difficult to find a person who is not working for a corporation or paying rent to a landlord. And, generally, they do both. So, to a great extent, the power of self-determination is lost to the individual.

Most people are under the impression that this is temporary and is only a repetition of that which has often happened before in our country; but the fact is, what we are passing through now is not a repetition of what has happened before but a new thing, based primarily on the new and all-controlling idea that the food is now following the people instead of people following the food. This has been made possible on account of the new cheap and wonderful means of overland transportation which has resulted from the substitution of inanimate power to take the place of animal power which had always prevailed for the purpose of transportation on the common roads and highways until the present generation. Of course, we have had cheap water transportation for many centuries, and we have had cheap overland transportation on the railroads for two generations, but the cheap water transportation was limited to the place where the water was, and the cheap railroad transportation was limited to the place where the railroad was. But now, we, under the present new and wonderful means of transportation, can transport everybody and everything to every place.

This, I say, is new and has worked a reversal of the tide of population, and it is an amazing thing to think how extensively this has worked and how quickly the transformation has come. The writer is old enough to remember when seven-eighths of all the people of the United States lived in the rural districts, and nearly all connected with the agricultural industry. Now, seven-eighths of all the people in the States east of the Mississippi River and north of the Ohio live in cities or centers of industry, or are divorced from agriculture. In the State of New York, nine out of every ten of its people now live in the cities of that Empire State; and the last census report on population shows one out of every five in the whole United States are removed from the farms and concentrated either in the great cities or in the industrial centers. That means two out of every ten.

This is thought to be a great calamity, and it certainly is to those who suffer by reason of the loss of their industry, property, and occupation. But we must consider that when a nation devotes its labor most largely to the production of food, that product perishes with its use, but when a large and major proportion of the population has been withdrawn from the fields of agriculture and devoted to other industries, we find that the products of other industries do not perish with their use, but many of them last for generations—such as high buildings, great cities, systems of transportation, tools and machinery, and the like.

It is by the concentration of wealth and population in the centers of population and industry that we are able not only to produce the things that do not perish with their use, but we are able to produce them in the greatest abundance. There is no increase in the productive power of labor so long as it is devoted to solitary and primitive means of production. A man with a hoe or a blacksmith with his hammer can produce no more to-day than he could a hundred years ago, but by means of this concentration of wealth and population, the division of labor and the application of power to machinery we are able to multiply the productive power of labor by ten or more. And by so doing, we raise the standard of living and added greatly to the common wealth.

Emphasis should be laid on the fact that there is no way discovered by which we can add to the productive power of labor except by the concentration of wealth and population, as stated above. Some may say that we have increased the productive power of labor by introducing new and profitable means of sowing and reaping and threshing, which has been increased to a marvelous degree; but I call attention to the fact that all these labor-saving machines that add so much to the productive power of the agriculturist are all made in the industrial centers, and can not be made otherwise.

Now, mark you, that all this increase in the productive power of labor which manifests itself only in the concentrated centers of industry was never possible without the cheap overland transportation. So that our civilization is made and being controlled by this new and wonderful means which has been introduced in so short a period of time, but is operating so constantly and so continuously that it is not possible to change this current of population away from cities and send it back into the country districts.

Senator BORAH often speaks of what he calls the trek from the country to the city. He and many others seem to have the impression that something ought to be done to reverse this trek, but it is based upon an economic law that is irresistible in its nature and can not be overcome by legislation or appropriation of money in the main and in the long run. Assistance should be given, but no attempt should be made to reverse this law of population which is manifesting itself so strongly for the first time in the history of civilization, as stated above.

It is not, however, a calamity to our country as a whole to have food products produced cheaply and in the greatest abundance. We have succeeded in speeding up production until many think there is an overproduction, but we have not yet succeeded in effecting sufficient economies in the matter of distribution so that our people can avail themselves of that abundance which nature and arts have combined to produce. Those who think we have too much of everything should consider that we do not have too much of cheap transportation and cheap food delivered from the field of production into the hand of the consumer. There is a field in which the harvest is great but the laborers are few.

There is too much difference between the price paid to the producer and the price paid by the consumer. Wheat is 60 cents a bushel on the plains of Nebraska. Bread is 10 cents a loaf in the city of Washington. Idaho (bake) potatoes are 25 cents apiece in Washington, 25 cents a bushel in Idaho. Apples are 15 cents apiece on the fruit stands and 15 cents a bushel in the orchards. Sugar in Cuba is 1 cent a pound and candy $1 a pound. Milk produced at 1 cent a quart sells for 15 cents a quart.

These are extreme illustrations, but it is indisputable that the price paid to the producer is altogether too low and the price paid by the consumer is altogether too high. This results from the manner in which the business is done, and is based upon the former statement above—that the food, for the first time in the history of civilization, is following the people to the great cities. To the cost of production is added the cost of packing. To the cost of packing is added the cost of loading. To the cost of loading is added the cost of transportation and refrigeration. To the cost of transportation to the center of distribution is added the cost of cartage. To the cost of cartage is added the cost of storage. And to all these must be added interest, taxes, and insurance.

The tax is generally imposed in the nature of a permit or license which acts as a 3-fold method of taxation by which the wholesaler pays for the license and the retailer pays again for another license, and they both operate and cooperate together so that it amounts to a conspiracy in restraint of trade, the result of which is a very great and unnecessary increase in the cost to the consumer. To the items enumerated above should be added inspection and threefold profit. The licensee is not only authorized to charge the highest price but is almost required to do so. The

licenses, in fact, are so many "indulgences." If any dealer should break the price he would soon be broken himself, for his supplies would be cut off. This is all essentially wrong, and is working a great hardship upon the common people. What is recognized as a depression may easily become an oppression. Now, many of these things, so unnecessary and harmful in their operation, can be reduced or eliminated.

First of all, in the matter of transportation. When we had genuine competition in the matter of transportation we had much lower rates than are prevailing at the present time. The mass production, which has resulted in such an abundance of things produced at a minimum of cost, applies to the railroad transportation. They have, during the last 30 years, reduced grades, taken out curves, enlarged the size of their cars, increased their capacity space, and more than doubled the length of their trains. All these economies have, in reality, worked a diminution in the cost of transportation. Notwithstanding these economies the rates have been substantially doubled. They tell us that this is necessary on account of the increased cost of wages, but every man employed in the necessary transportation of freight, while receiving double wages, transport at least four times as much freight as formerly. So that the rate, instead of being double should be divided by two.

Mr. Fred W. Sargent, president of the Chicago & North Western Railway, has an article in the World's Work for December, 1930, showing the comparative rate of transportation on the steam railways and the cost of transportation in Africa by man-back transportation. He makes a very good showing by comparing the primitive means of human power with the established transportation on the railroads of this country. He states the rate as follows: On railroads of the United States, 1.116 cents per ton per mile; on man-back transportation, 43 cents per ton per mile. His comparison is very favorable to the railroads, but he makes no comparison between the rate as prevailing now and what formerly prevailed in the earlier days of transportation, when we had a real competition. A reference to the report of the Ohio Road Commission to Governor McKinley, of Ohio, made in 1893, will show that the average rate on long-haul freight in the United States was just a trifle over one-half a cent a ton a mile. In other words, the rate which Mr. Sargent gives as the prevailing rate to-day is a trifle over 1 cent per ton per mile, whereas a generation ago it was just a trifle over one-half cent per ton per mile.

A reference to the same report will show the average rate of transportation with animal power over the common roads was 25 cents per ton per mile, which has now been reduced to such a low rate as to constitute a substantial competition to the increased rate on the railroads. This has been brought about by the substitution of inanimate power for animal power for transportation on the common roads and highways. A substantial advantage is gained by the new method on account of the fact that the State, or the public, furnishes and improves the right of way and the enterprising individual furnishes the vehicle and the power. So that we have now, for the first time in a hundred years, a restoration of the original division of labor which had prevailed up until the time of the introduction of railroads.

The railroad furnishes the right of way, the track, the vehicle, and the power. Neither the State nor the individual furnishes anything; but under the new method we are restoring that natural division of labor that had prevailed time out of mind whereby the State furnished, improved, and protected the right of way, and the individual furnished the vehicle and the power. This constitutes the natural and most economical method that has ever been devised. We now get the benefit of all the State can do and all the inventive and constructive genius of our people can do. And this is going to make it possible to reduce the cost of transportation and eliminate many of the unnecessary charges connected with it, so that the food produced in the field can be delivered without excessive cost immediately to the consumer.

The two most expensive elements in the present prevailing cost of transportation are the man power used and the unnecessary dead weight that is carried. All of our vehicles weigh as much or more than they carry. In other words, it costs us as much to carry the dead weight as it does to carry the live weight. This is a fundamental error and can be reduced or eliminated. There is already devised a method for short-haul transportation whereby all of the man power can be eliminated and most of the dead weight. This would enable every city to be supplied with its perishable food daily and almost immediately from the field of production to the hand of the consumer. We are now making great progress in aerial transportation, but it would seem to be more important to devise better and cheaper means to supply the people with food from the near-by fields rather than to bring such food products from such distant places. I sat at a table not long ago at which fruit from California, 3,000 miles away, was served concurrently with jam from London, 3,000 thousand miles in the opposite direction. Better fruit and better jam could be provided within less than a hundred miles of the place of consumption. These are illustrations of the economic waste that we are encountering.

I noticed only a few months ago that Mr. Edison, in a magazine article, referred to the fact that in New York they think they are doing things in a very economical way, but he affirmed that they were doing almost everything in the most expensive and uneconomical way. This seems to me to be evident.

If I am right in my statement that for the first time in the history of civilization the current of population has been reversed, then the true way to eliminate our difficulty is not to try to counteract this natural law, but to operate and cooperate with it and thereby produce for our people better housing and cheaper means of transportation so that they could avail themselves in comfort of the abundance of things in the midst of which we live but are not able to possess.

All of the experts who have offered remedies for the so-called depression are like the man in the Arabian tale who stood saying: "Open, wheat; open, barley," to the door that obeyed no sound but "Open, sesame!"

Governor La Follette, of Wisconsin, in his inaugural address, January, 1931, said:

"As a State and Nation we have astounded the world in production. Our energy and brains have shown the world how to produce the necessities and luxuries of life in sufficient quantity to satisfy the needs of all of our people, but in the midst of abundance of agricultural and industrial production we have want and suffering.

"Unless we can solve the problem of the distribution of this abundance, unless we can stop hunger and hardship in all of this plenty, we will be the actors in the greatest tragedy of history."

"Ill fares the land to hastening ill a prey,
Where wealth accumulates and men decay."

Our principal trouble seems to manifest itself in agrarian laws. Nearly all the complaints and most of the distress, and all of the plans for relief, spring out of the agrarian situation, and the effort is to relieve the farmer, and employ the unemployed who can no longer employ themselves. Farm relief and the tariff are the two main things that have been proposed, together with the appropriation of money. We are all told, and almost everybody believes that history repeats itself, but they nearly all think that it could never apply to this country; but the fact is that the agrarian troubles and the agrarian laws passed in the later days of the Roman Republic are almost exactly identical with our agrarian troubles and our agrarian laws. It is also a further fact that in the later days of the republic, which preceded the Roman Empire, much money was spent in elections, and they had a censor by the name of Cato who was authorized to put out of the senate any senator who had more money than the small allowance that was specified in the law. We have lately put out four or five Senators, thereby showing the relation that exists between the ancient imperial Roman Republic and our own great Republic. They had enlarged the franchise, which we have also done.

There are many matters of history which are being repeated in our own country at the present time, and I think it is the part of wisdom that we should be admonished before it is too late, so that we shall not repeat the ancient history of the Roman Republic. I find that most students are familiar with the rise and fall of the Roman Empire, but very few seem to be familiar with the rise and fall of the Roman Republic which preceded the empire. Let us beware that we do not commit the same errors that were committed in the later days of that great republic.

"Lord God of hosts, be with us yet,
Lest we forget, lest we forget."

AMENDMENT OF THE CONSTITUTION

Mr. WAGNER. Mr. President, I ask unanimous consent to have printed in the RECORD a report by a committee of the New York State Bar Association in relation to a joint resolution pending in the House of Representatives, being the joint resolution (H. J. Res. 396) providing a method of amending the Constitution.

There being no objection, the matter referred to was ordered to be printed in the RECORD, and it is as follows:

REPORT OF THE COMMITTEE OF FIVE TO LOOK INTO AND REPORT ON THE SEVERAL PROPOSALS PENDING IN CONGRESS TO AMEND THE FEDERAL CONSTITUTION

To the New York State Bar Association:

* * * * * * *

H. J. Res. 396: Providing a method of amending the Constitution. Referred to the Judiciary Committee. No action was taken by that committee.

In our last annual report we noted that there had been filed with Congress under the provisions of Article V of the Constitution, petitions of 35 States (being more than two-thirds of the entire number), praying that a convention should be called to propose amendments to the Constitution, and that they had not been acted upon by Congress.

Article V of the Constitution provides as follows:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; * * *."

(The part of Article V omitted from the above quotation relates only to provisos which have no bearing upon the question considered below.)

At the date of our last report detailed information as to the petitioning States was not available. At the second session of the Seventy-first Congress, however, Senator TYDINGS presented to the Senate a compilation showing all of the applications for the calling of a constitutional convention which had been made to

Congress since the adoption of the Constitution. The statement was printed as Document No. 78 It seems to show that 36 instead of 35 States have filed petitions. Upon the information contained in Senator TYDING'S statement our report is based.

The first petitions for a convention were filed in 1788 by Virginia and by New York in 1789. The petition of Virginia was filed after that State had ratified the Constitution. It recited the dissatisfaction with the Constitution which had been voiced in the State convention, and requested that a convention be called to correct the errors which were pointed out. The petition of the State of New York was general in its terms and was probably filed for reasons similar to those which moved the Legislature of Virginia. At the time of the presentation of the two petitions, the Union was composed of 13 States, and it would have required the requests of 9 States to compel Congress to act under Article V. Not only in Virgina and New York, but also in other States, opposition to the ratification of the Constitution had been based upon dissatisfaction because there had not been included in the Constitution a bill of rights. That dissatisfaction was largely removed by the proposal by Congress and the ratification by the States on January 8, 1798, of the first 10 amendments of the Constitution. In the preamble to the resolution of Congress proposing those amendments, it had been stated as follows:

"The conventions of a number of the States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the Government will best insure the beneficent ends of its institution."

After 1789 no further petition was filed for 43 years. In 1832 Georgia filed a general petition to Congress for a convention. In the following year Alabama also filed a petition for a convention "to propose such amendments to the Constitution as may be proper to restrain Congress from exerting the taxing power for the substantive protection of domestic manufactures," that is to say, to prevent the adoption of a protective tariff policy. In the next 66 years no petition was filed. In 1899 the State of Texas in a petition making express reference to the desirability of the election of Senators by direct vote of the people, requested that a convention be called for "proposing amendments to the Constitution of the United States." After 1899 and down to 1911 petitions became numerous, amounting with the earlier petitions above referred to to 36 in the aggregate. Of petitions filed from 1899 to 1913 by 33 States, some confined the purpose of the convention to the adoption of an amendment for the election of Senators by direct vote of the people, and some extended the purpose to amendments generally. In the seven years from 1906 to 1913, 12 States filed petitions for a convention to propose amendments prohibiting polygamy. Since the year 1913 there have been filed no petitions for a convention, except that in 1929, Wisconsin repeated its request several times previously made.

We have thus set forth the facts which seem to be material in considering whether, within the intent of Article V of the Constitution, "application of the legislatures of two-thirds of the several States" has been made to Congress so as to impose upon it the duty to "call a convention for proposing amendments." The solution of this question must depend upon the further inquiry as to whether there is any limitation of the period for which a petition of a State for a convention remains in force for the purpose of making up the two-thirds of the States as provided in Article V. The article itself prescribes nothing upon the subject, and any limit would have to be implied. In considering what the implication should be it will be of assistance to consider the period within which an amendment to the Constitution proposed by Congress under the alternative provision of Article V must be ratified by the requisite number of States. That question was considered by the Supreme Court in Dillon *v.* Gloss (256 U. S. 368). Article XVIII, being the prohibition amendment, expressly provided that it should be inoperative unless it was ratified by the several States "within seven years from the date of the submission hereof to the States by the Congress." It was held by the Supreme Court that ratification of amendments proposed by Congress must be made within a reasonable time, that Congress has power to determine what a reasonable time is, and that the limit of seven years imposed by the eighteenth amendment was reasonable. In disposing of the case the Supreme Court, in a unanimous decision, said:

"That the Constitution contains no express provision on the subject is not in itself controlling; for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed. An examination of Article V discloses that it is intended to invest Congress with a wide range of power in proposing amendments. * * * When proposed in either mode (i. e., by Congress or by Federal conventions) amendments to be effective must be ratified by the legislatures, or by conventions, in three-fourths of the States, 'as the one or the other mode of ratification may be proposed by the Congress.' * * *

"We do not find anything in the article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that the amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which, of course, ratification scattered through a long series of years would not do. These considerations and the general purport and spirit of the article lead to the conclusion expressed by Judge Jameson 'that an alteration of the Constitution proposed to-day has relation to the sentiment and the felt needs of to-day, and that if not ratified early while that sentiment may fairly be supposed to exist it ought to be regarded as waived, and not again to be voted upon unless a second time proposed by Congress.' (Note.—The quotation is from Constitutional Conventions, by John Alexander Jameson, LL.D., 4th edition). That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810, and one in 1861—are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal."

The reasons thus given by the court for their conclusions are of almost conclusive weight in enabling us to determine the limit of time in setting in motion the machinery for the amendment by means of the convention method; for there is nothing in Article V to show that the matter of calling a convention should be open "for all time" or that petitions for a convention in some States might be separated from those "in others by many years and yet be effective." On the contrary, the implications are the other way; for the calling of a convention would presumably be in response to a public demand and it is not probable that the demand would continue unabated for an indefinite period. Indeed, it can be said of the convention method, as it was in Dillon *v.* Gloss, that the filing of the successive petitions by the several States are not to be treated as "unrelated acts but as succeeding steps in a single endeavor." As a consequence, the filing of the first and the last petition is not to be "widely separated in time." In other words, both methods of amendment prescribed by Article V, presuppose that whichever is availed of it shall be completed within a time which is reasonable in view of the state of public opinion on the subject in the States. It is fair to assume that only "when there is deemed to be a necessity therefor" will a convention be requested and the "implication" will follow that the question whether a convention is to be called is to be "considered and disposed of presently." It may also be said, as the court in Dillon *v.* Gloss said of the method of amending on the proposal of Congress that the convention method should "reflect the will of the people in all sections at relatively the same period which, of course, ratification scattered through a long series of years would not do."

Reasonableness in the time occupied in the process of amendment must depend upon the continuance of the conditions, political or otherwise, leading to the demand of the State. Where the conditions have changed or the necessity they have created for amendment have been satisfied, it may reasonably be presumed that the public demand for it has abated. Upon this principle it is not difficult to arrive at the conclusion that the petitions which were filed in 1788 and 1789 by Virginia and New York and which in a period of 43 years had not been renewed and in the purpose of which no other State had concurred, had ceased to be effective. The omission of any additional States to petition fairly justifies the inference that the demand voiced in the petitions of Virginia and New York had been satisfied by the ratification of the first 10 amendments. It would be absurd to bring the two petitions of 1788 and 1789 to the support of demands which commenced to be made 110 years later and for considerations which the people of 13 States could not have anticipated. The same argument applies with reference to the petitions filed by Georgia in the year 1832 and by Alabama in 1833. One of these was general and the other was confined to the purpose of limiting the power of Congress to impose a protective tariff. To all four of these early proposals the language of Judge Jameson (Constitutional Conventions, 586) in relation to the right of the States to vote upon amendments proposed by Congress is applicable. He says:

"If they have that right (to ratify after a long interval) there are now floating about us, as it were, in nubibus, several amendments to the Constitution, proposed by Congress, which have received the ratification of one or more States, but not of enough to make them valid as parts of that instrument. Congress could not withdraw them, and there is in force in regard to them no recognized statute of limitation. Unless abrogated by amendments subsequently adopted, they are, on the hypothesis stated, still before the American people, to be adopted or rejected."

Judge Jameson also mentions the instance referred to by the Supreme Court in Dillon *v.* Gloss, where the State of Ohio in 1873 sought to ratify one of the 12 amendments submitted to the States by Congress in 1789, which had then been rejected. He calls attention to the fact that in 1789 the States numbered only 13, whereas in 1873, when it was sought by Ohio to act upon the proposal made 80 years before, they numbered 38; and in support of

the conclusion expressed by the Supreme Court that the effort of the Legislature of Ohio was futile, he adds:

"And, supposing the right referred to exists, by what majority shall the resurrected amendment be adopted? If proposed in 1789, when the States numbered but 13, and when a majority of 10 States might have ratified the amendment, how many would have been requisite in 1873, when there were 38 States which would have been called upon to vote? If the answer should be that 29 States must have voted to ratify, since that number was three-fourths of all the States in 1873, however reasonable such an answer might seem, it would be founded upon no statute or custom of the country, and therefore different opinions as to its reasonableness might well be entertained. Hence the danger of confusion or conflict."

Considering, therefore, (1) the long lapse of time since the presentation of the petitions of 1788, 1789, 1832, and 1833, (2) the absence of "the sentiment and the felt needs of to-day" for the petitions of other historical and political eras, and (3) the facts that there are now 48 States instead of 13, as there were in 1789, or 25, as there were in 1833, and that the petition of no State has been added in 43 years since the early petitions were filed, there can be no reasonable conclusion except that the States which made proposals for a convention before 1899 can not be counted to make up the two-thirds of the present number of States required to put the convention method into operation.

But the petitions filed at intervals between 1901 and 1913 must also be considered. Fifteen of these petitions were confined to a request for a convention to propose an amendment for the election of Senators by direct vote of the people, 12 expressed a desire that the convention should also consider general amendments of the Constitution, 2 were general in their purpose, and 4 were directed at the constitutional prohibition of polygamy. The purpose of the States was thus sufficiently expressed and will go far to determine how long the petitions would remain effective. The petitions for the election of Senators by the direct vote of the people showed a widespread public opinion favorable to that change. But they were not numerous enough to make it mandatory upon Congress to call the convention, and Congress removed the necessity for the convention method by responding to the prevailing sentiment and itself proposed Amendment XVII, which was speedily ratified, the ratification being proclaimed by the Secretary of State on May 31, 1913. The committee therefore is of the opinion that as the purpose in filing the petitions for the popular election of Senators was satisfied, and as there has been a lapse of 17 years without a renewal of the petitions, they have become ineffective. If the same conclusion is doubtful concerning petitions requesting a convention for general purposes, it is sufficient to say that the deduction of those petitions relating exclusively to the popular election of Senators, would reduce the number of petitioning States substantially below the required two-thirds. Twelve petitoins were filed in the seven years from 1906 to 1913, requesting a convention to adopt an amendment to prohibit polygamy, but in the opinion of the committee they also have lapsed, because the public sentiment which led to the petitions has ended through legislation making polygamy a crime (U. S. C. A., title 18, sec. 513 [1884]) and denying citizenship to an alien practicing polygamy (U. S. C. A., title 8, sec. 364 [1906]), which for a long period has been effective to abate the evil.

We conclude that the two-thirds of the States required under Article V of the Constitution to require Congress to call a convention have not filed petitions requesting such a call.

Respectfully submitted.

HENRY W. TAFT, *Chairman,*
WILBUR F. EARP,
EDWARD G. GRIFFIN,
WESLEY H. MAIDER,
ROSCOE R. MITCHELL,
ISAAC R. OELAND,
Committee.

DECEMBER 31, 1930.

POSTAL CONTRACTS WITH THE SHIPPING BOARD

Mr. JONES. Mr. President, a short time ago there was printed in the RECORD an article prepared by Mr. Nicolson with reference to postal contracts entered into by the Shipping Board with the Post Office Department. I have here an analysis of that article by Mr. Plummer, vice chairman of the Shipping Board, and also a letter from him stating that the analysis has been unanimously approved by the Shipping Board. I think that his letter and the analysis should be printed in the RECORD.

There being no objection, the letter and analysis were ordered to be printed in the RECORD, as follows:

UNITED STATES SHIPPING BOARD,
Washington, January 22, 1931.

Hon. WESLEY L. JONES,
United States Senate, Washington, D. C.

MY DEAR SENATOR: To you as a coauthor of the merchant marine act, 1928, I send this my analysis of the Nicolson "Truth About the Postal Contracts," which analysis was prepared by direction of and has been unanimously approved by the United States Shipping Board.

Sincerely yours,

E. C. PLUMMER, *Vice Chairman.*

FACTS ABOUT THE POSTAL CONTRACTS

Some comments appearing in the CONGRESSIONAL RECORD of December 20, 1930, comments voicing impressions received from a thesis by Mr. John Nicolson and titled by him "The Truth About the Postal Contracts," indicate that a more accurate title for that work would be "Some Half Truths About the Postal Contracts."

To illustrate, take his criticisms of the Dollar Line mail contracts, presented on pages 65, 66, and 67. Condemning the contract of the Admiral Oriental Line—that is, the Dollar Line—running from North Pacific ports to the Orient, he says: "The outward voyage exceeds 6,800 miles. The annual subsidy therefore exceeds $1,070,000 for each of the first five years and $1,420,000 for each of the remaining five years." Then on page 67, commenting on those payments, he says: "It is obvious they were awarded solely as subsidies." "Solely as subsidies!" Yet he neglects to state the fact—which his persistent inquisitiveness makes it absolutely certain he must have known—that even while the Shipping Board was operating this line in 1924 the mail pay received by the Admiral Oriental Line for outward mail alone was $813,443.38. That is, the post office actually paid on an exclusively poundage basis, a basis which even Mr. Nicolson has not questioned as being for services actually rendered, more than three-quarters of the sum which they now pay those same ships under this "amazing" mail contract; and yet, ignoring the amount which the Post Office Department would have to pay these vessels if they still were on a poundage basis, he declares this payment for carrying the mail under a mail contract is exclusively, is "solely," a subsidy. If that misstatement was not intended to mislead, why was it made?

An approximately fair statement of the case would have been: "These mail-contract payments are a substitute for the old poundage-rate payments; and since poundage payments were for the services actually rendered, the difference between what would have been the poundage payments and the payments actually made under this mail-contract system is, in my opinion, solely a subsidy."

Of course, even that statement would not have been wholly fair to the mail contract because a vessel carrying on a poundage basis can withdraw from the service any time it desires, just as four great British vessels, because of business depression, last year withdrew from New York services to the east and west coasts of South America but these mail contracts compel operation for 10 years, whatever the business conditions may be—a burden that easily might wipe out that increased compensation here called a subsidy. Yet he says the whole amount paid under this mail contract is "solely" a subsidy. And he also ignores the fact that, according to Sir Frederick Lewis's recent official statement, operating costs of ships have increased from 75 to 80 per cent since our rate of poundage pay for mail was adopted.

Again, in attacking the Oceanic & Oriental Co.'s mail contract, he says (p. 41):

"In this instance not only did the Shipping Board certify the vessels required, it also included in its certification that the vessels be paid $2.50 per outward mile—the maximum rate. This fact is referred to, not only in justice to the then Postmaster General, but because the action taken was based on a principle we believe to be untenable, as follows:

"The board had before it an official certification from its own experts, based on their recent examination of the matter. This showed, not only that the lines could be operated without a deficit, but, based on a 3-year period, there would be a profit, approximately, of $230,000."

Now why does he rip these figures from their explanatory context and not only omit all reference to the $2.50 mail rate appearing right below the fragment he quotes, but also omit those conclusions reached by that same board of experts found on the same page with his extracted "profit" figures, viz:

"* * * It would appear under any circumstances that the surplus shown on the attached statement would be insufficient for replacements of any kind. * * * As suitable replacements are the very essence of permanent operation on a profitable basis, it is felt that this would be the thing aimed at in allowing this company a liberal mail contract as contemplated under the new mail act."

While emphasizing the fact that the recipients of this "mail bounty" were not bound to build any new ships under their contract, he knew that the owners of these lines not only had announced their purposes to build three magnificent ships of at least 20 knots speed, to cost upwards of $25,000,000, but on October 25, 1929, two of these ships actually had been contracted for, with an option for a third sister ship, which option has since been exercised, and that ship also is now under construction. Why does he leave the impression that no such facts exist?

And he also knew that, in spite of such aids as the act of 1920 had provided, aids he asserts to have been ample, not a single vessel for foreign trade was built in American yards until the mail act of 1928 was passed.

Now as to another class of mail contracts: Mr. Nicolson knew perfectly well when he presented those elaborate detailed statements, showing how small is the amount of mail carried on certain freight lines, when compared with the amount of mail compensation received by such lines, that in making these mail contracts there was no intention of having the amount of mail pay governed in any way by the amount of mail carried. In that section of the annual report of the United States Shipping Board for 1926, page 6, dealing with traffic, which section of the report Mr. Nicolson wrote, he uses this language:

"* * * The policy is clearly outlined that the compensation is not to be measured exclusively by the transportation value of the service rendered but by a broader test, including other factors, and including the amount of compensation necessary to maintain the route as a service desired 'in aid of the development of a merchant marine adequate to provide for the maintenance and expansion of the foreign and coastwise trade of the United States and a satisfactory postal service in connection therewith.'"

The following year he practically repeated that statement (p. 8, Annual Report of the United States Shipping Board for 1927).

Though he adroitly creates in this thesis an impression that the act of 1928 not only repealed existing legal aids to American shipping but failed to provide any special aids whatever, so that (p. 4),

"The Postmaster General would have been well within the law had he refused to pay out under it 1 cent in excess of the commercial value of the transportation service performed; and yet he elected to commit the Government to paying hundreds of millions in excess of that value!"

and, repeatedly referring to "subsidies," charges that, contrary to the intent of Congress, contracts have been made providing for payments far in excess of what even subsidies would ask, such was not his revealed opinion on August 17, 1928, when he so officiously took up the matter of providing a mail contract for a ship line running out of his old home city, Savannah, then under consideration. Although the line at that time had not even been purchased, and ultimately was purchased at the unprecedented low price of $3 per ton, which price was half consumed by the repairs which the board was forced to make before these ships would be accepted, Mr. Nicolson apparently determined that buyers of his old home's service should run no risks whatever in taking over this line, had several negotiations with the Post Office Department regarding a mail contract, and finally secured one at the maximum mail pay possible under the law of 1928—this case being one where the "subsidy" of low sales price and the "subsidy" of "unjustifiable mail pay" were secured simultaneously.

In his 4-page, single-space letter of approximately 1,240 words, dated August 17, 1928, or two months before this Savannah line was purchased, Mr. Nicolson says, among other things:

"Referring further to the possibility of a postal contract for the route between a South Atlantic port and north Europe ports about which Mr. White, director of foreign mails, and the writer have several times conferred with special reference to the route at present covered by the United States Shipping Board American Palmetto Line:

"* * * It is frankly recognized both in Congress and in the administration of certain laws relating to ocean mail (such as the ocean mail act, 1891; sec. 24 of the merchant marine act, 1920; and the recent act of 1928) that the plan is in no sense solely for the transportation of mail; jointly with this important aspect of the matter is the fact that the development of our merchant marine is also intended, and the cooperation of the Post Office Department to that end has been most gratifying to the friends of the merchant marine. It is the obvious policy of Congress that the development of our merchant marine shall be a geographical development in the sense that lines operating from various parts of the United States should be encouraged and developed.

"* * * As applied to the service we have had under consideration, namely, from Savannah to north Europe, the importance of Government aid is demonstrated by the very heavy deficits which the Shipping Board has had to meet in the operation of the line now offered for sale. If the 10-day mail service to northern Europe and the United Kingdom, as suggested above, should be adopted as the basis of a postal contract, the expenditure by the Government through the Post Office Department would be less than $10,000 per voyage, whereas the cost to the Government of maintaining this service during the fiscal year ending June 30, 1928, was nearly $20,000 per voyage (to be more exact, it averaged $19,238 per voyage); hence if the line is sold to private operators, and a postal contract is given them on the basis of three sailings per month, as suggested above, the Government would save nearly $10,000 per voyage, compared with last year's operations; we therefore commend to your consideration whether steps may not be appropriately taken to advertise the route mentioned on the basis suggested. * * *"

It will be noted that not only does he here declare it was the intent of Congress that this act should give aid to ships but in justification of it he shows a fact, which is to some extent true of every line of freight ships the Government sold, that by giving these mail contracts the Government vastly reduces its losses in the operation of such lines—in this case pays only $10,000 per voyage in place of approximately $20,000 per voyage losses which the Government was paying before this line was sold. Is such an argument to be limited to Mr. Nicolson's own old home city? Yet he denounces the Shipping Board for acting along those very lines. While he condemns so severely the alleged practice of the Postmaster General in making an advertisement fitted to a particular line, in this case he even outlines for the Postmaster General what he wants for this Savannah line when it shall have been purchased. Why doesn't he state that the deficit of ship operation by the Government for the fiscal year ending June 30, 1925, immediately after which date the sale of lines began, was $30,000,000; and that largely as a result of these sales an appropriation of less than $2,000,000 is now being asked? Is a saving made by giving a mail contract at the maximum rate to a Savannah line perfectly proper and commendable, but not justifiable from any other port? And he doesn't even suggest that the Savannah contract ought to contain a provision for building at least one new ship. Why?

Yet he devotes pages 82 and 83 of this thesis to a detailed statement of the actual amount of mail carried, compiled under the subhead The Mail in Fact Transported; among others citing the American South African Line, where he says: "Compensation, at normal rates, $375; amount in fact paid, $165,000."

But in this impressive list Mr. Nicolson makes no reference to the fact that the mail actually carried by this Savannah line during four months would have amounted to only $35.66, while the mail contract pay was approximately $130,000, yet this Savannah line was one of those included in the list furnished him by the Postmaster General, upon which report he avowedly bases this 2-page exhibit. Why did he indulge in this omission? Why did he also omit from this exhibit that part of the Postmaster General's detailed statement which showed such heavy amounts of mail being transported by other lines?

Furthermore, disregarding the explicit statement of the Postmaster General that American flag vessels, independent of contracts, are paid 80 cents per pound against 26.3 cents per pound for foreign vessels, Mr. Nicolson's computations for this exhibit use the foreign rate of pay; and even then his figures are astoundingly wrong—for example, he calls the export normal rate pay $1,770 when his own figures should have shown him that even at this foreign rate pay, the amount would be $17,629.94—$40,299.36 at American poundage rates.

The total of his several amounts, alleged here to be the normal mail pay earned, is only $92,051. Had those several amounts been correctly stated, they would have totaled $334,871.57. At the regular poundage rates paid American flag vessels, the total would have been $791,414.81 for mail actually carried.

He may now attempt to plead that he did not intend to condemn the principle of granting mail aid in excess of poundage rates, but only to claim that the payments made under these mail contracts are too high. But he is estopped from making this plea by his own elaborate emphasizing of the small amount of mail carried by these lines; for if contract aid beyond the poundage earnings of these lines is to be allowed, obviously, the amounts of mail actually carried by the ships involved can not have any legitimate bearing on the problem at hand; and therefore the emphatic introduction of this feature could only have the effect of confusing and misleading, even if the computations had been properly made.

Report No. 1279 of the Merchant Marine and Fisheries Committee on the act of April 17, 1928 (it was in the House that the mail-pay section of this bill originated), states:

"* * * Other nations have proceeded upon the theory, in most instances, as have your committee, that the payments made are for a definite national service rendered. * * * The difficulty in the United States always has been the inadequacy of the payments authorized, a failure to aggressively and continuously adhere to the policy, and an unwillingness to make contracts for a substantial term of years. * * * Generally speaking, it may be said that vessels moving between ports where competition by foreign flag ships is lawful, are eligible for contract. * * *"

Criticizing the Scantic Line's mail contract and referring to the speed shown by certain foreign vessels competing in this service, Mr. Nicolson says: "Should not the board have certified a size and speed of vessels capable of meeting this foreign competition?" But he carefully omits to state that those so-called faster foreign vessels are in the service for only a part of each year—the more profitable period, while the Scantic Line ships serve American commerce all the year round, and when these so-called faster ships are withdrawn, the Scantic ships are at present the fastest in that service.

And he ignores the fact that after its faster service was inaugurated, the mail pay on this line was $550,000, while the mail carried by it during this same period would have cost on a poundage basis $380,124.55. Why does he omit these very important facts? He likewise overlooks the fact that the increased amount of mail now carried on these American ships without additional compensation has largely reduced the amount which the Post Office Department was formerly paying to foreign vessels.

Had Mr. Nicolson's purpose been to show that the Government was paying the ship lines too much money, why did he not proceed to prove it and stop there? Why does he raise the point that the act of 1928 provides for no aid to American ships and declare that the Postmaster General would have been entirely within the law had he refused to pay anything beyond the "commercial value"; that is, nothing more than the poundage rate under the International Postal Union? What possible purpose can he have in thus attacking the meaning of the law and the validity of contracts made since its enactment, except to frighten shipping men out of proceeding with new construction which is now going on so magnificently to the future advantage of American commerce and the present great advantage of American labor?

As illustrative of the tremendous difference in the operating cost of American and foreign ships, take the case of three Norwegian steamers now being operated by an American company under 2-year charter. These ships are practically duplicates of the freight ships which the Shipping Board has sold for service on lines operating in the foreign trade. The operating cost of one of these Norwegian ships is $345 per day, which sum also covers depreciation and interest on a valuation of $410,000. The operating cost of these similar American freighters is $570 per day, based on a valuation of only $200,000. That is, the daily operating cost of the American ship, based on the bargain price of only $200,000, is nearly twice the daily operating cost of these Norwegian ships, based on their full valuation of $410,000.

It was the knowledge of such facts as these which guided the Merchant Marine and Fisheries Committee of the House when determining the rate of mail compensation which might be allowed to American vessels.

Now, as to the two subsidies he says these lines enjoy: Take the low price at which ships were sold. These lines were sold at a low price in an attempt to keep the services established by the board in operation until such time as Congress might pass aid legislation. The contract of sale provided for operation for a period of five years. The board attempted to get a longer service period guaranteed. It strove persistently for a 10-year period, but no company would undertake such a contract. It was reasoned that the low price at which the vessels were sold would enable the buyer to stand such losses as might be incident to their operation for five years. Then the owner would have his fleet free to operate in the protected coastwise trade of the United States, and thus come out at least even at the end of his contract. What the board really sold when transferring these lines to private American citizens at such seemingly low prices was a 5-year contract for guaranteed operation. But it was recognized that selling these lines at reduced prices under 5-year service guaranties merely meant utilizing such vessels as subsidies, causing the vessels to live off themselves so long as they lasted—there was nothing in the plan to make possible any new ship construction—no replacements were possible.

Seven of the lines sold under these conditions already have worked out their 5-year contract, and the others which were sold before the 1928 legislation was enacted are very near the end of their 5-year period; so that the subsidy which was involved in the low price at which these vessels were sold has been practically eliminated. It was known, of course, that our freighters, built without any thought of adapting them to any particular trade but designed to permit of the quickest possible construction and equipped with machinery that could be most quickly built, could not long compete with these new foreign ships, which immediately after the close of the World War foreign nations began to build (it will be remembered that there has been built during the last 10 years by foreigners some 10,000,000 tons of shipping, or more than the entire fleet of American ships now engaged in foreign trade), but it was hoped to continue these American services, so essential to the development and production of American commerce, until Congress did give the necessary aid. That such aid would be given was confidently expected, and on July 3, 1926, the Senate passed a resolution (S. Res. 262) directing the Shipping Board to prepare and submit to the Senate plans for building up and maintaining an adequate merchant marine for commerce and national security (1) through private capital and under private ownership, and (2) through construction, operation, and ownership by the Government. The Shipping Board complied with this request. The act of 1928 came. It was not the form of law which many desired. It was not the form of law which the Shipping Board had submitted to the Senate. But it unquestionably was the greatest piece of legislation for the benefit of American ocean-borne commerce and American shipping that has been passed in the last three-quarters of a century.

It is safe to say that had not mail-aid legislation come when it did every one of these freight ship services, which had been sold at such seemingly low prices, would have gone out of the foreign service at the expiration of their 5-year period. They would have eaten up in losses the aid which had been given them in lower prices, and that was why the Shipping Board never was able to secure at any price whatever a guaranteed operation of these freight lines for more than five years.

Stating that these lines had been purchased without mail pay and thus implying that therefore they needed no mail contracts to make possible their continued operation ignores the fact, well known to Mr. Nicolson, that the aid coming from reduced sales prices was expected to be entirely consumed in five years, the period of guaranteed operation. Therefore, that statement could have no other effect than to mislead those who were necessarily unfamiliar with all the many details of these problems.

Again, in that section which Mr. Nicolson prepared for the Annual Report of the Shipping Board in 1925, page 24, he says:

"The value of this power (pay more than poundage pay) in the development of the merchant marine is further illustrated in the active negotiations which have been conducted by the Bureau of Traffic during the fiscal year with prospective purchasers of existing lines of the board, the success of whose operation after having passed into private hands will so largely depend upon adequate postal contracts. Facts developed by this bureau during the fiscal year in negotiations with a prospective purchaser of the Pan American Line, on which line is operated some of the finest of the Shipping Board's vessels, between New York, Rio de Janeiro, Buenos Aires, and other east coast South American ports, showed that a postal contract of about $1,000,000 per annum under the provisions of sections 7 and 24 would assure success of the operations of the line commercially. * * *

It will be noted that here Mr. Nicolson makes no reference whatever to the amount of mail carried; nor does he mention the fact that this million-dollar compensation recommended was based on the prosperous conditions of 1925 and before the great Furness Withy Line of Britain started running against these American ships their new economical Diesel-engined vessels which are now competing so severely with this Munson Line. The single fact that the Munson steamers consume 130 tons of fuel oil per day, while their new British competitors consume only 43 or 44 tons per day in their Diesel engines, shows what a tremendous advantage these competitors of Munson have in this one item, even when full allowance is made for the higher cost of Diesel oil.

If this thesis was designed to be informative, why were not some of these most important facts mentioned? Yet, ignoring these changed conditions and what he wrote in 1925, Mr. Nicolson now says that increasing the mail pay of this line $200,000 over the figure he had named, makes reference to it "as 'amazing' seems not only justified but inadequate."

One effect of this foreign competition with Diesel ships in this New York-Buenos Aires run is shown by the fact that the Lamport and Holt Line (British) was compelled to withdraw their two fast passenger ships, the *Valkyrie* and the *Vandyke*, which were built at practically the same time as these Munson ships, and like the Munson ships were steam propelled. Mr. Nicolson ought to have known, and if he did not, he never should have attempted to comment on these mail contracts, that the advent of the Diesel engine has caused such a development in the efficiency of steam propulsion that the machinery of any steamer built 10 or more years ago is to-day obsolete. The steam plant on any vessel built recently has an efficiency twice as great as the steam plant in vessels built when the Munson and Dollar ships were built, and since fuel oil is the greatest single operating expense of a steamer, what this new competition means to our war-built fleets can readily be understood.

How keen foreign competition has become is shown by the statement of Japan's greatest steamship company, the Nippon Yusen Kaisha Steamship Co., in its regular semiannual report to the stockholders just issued. This powerful company, which operates not only to Pacific but to Atlantic and Gulf ports of the United States as well, reports a deficit of 5,566,562.68 yen ($2,755,448.50) during the past six months.

Well, if an old established line like this, operated by Japanese labor, loses over two and one-half millions on six months' operations, where would American lines, meeting such competition, be without those "amazing mail contracts"?

It is a significant coincidence that last year while Mr. Nicolson was exclaiming against American ships getting so much pay, the Japanese Government, through its department of communications, provided a new subsidy of 5,000,000 yen per year for its freight ships operating exclusively between foreign countries. But the Japanese department of communications understood the shipping problem and wanted their nation's merchant ships to succeed.

Unable to ignore the famous case of the *Lusitania* and *Mauretania*, Mr. Nicolson makes this indefinite and, in part, false statement regarding those two ships:

"Those who seek to justify the contracts made usually mention that Great Britain, about 25 years ago, subsidized the building and the operation and the maintenance of the steamships *Lusitania* and *Mauretania*, vessels exceeding 30,000 tons each, and a speed of 30 knots—the greatest and fastest vessels in the world. Such products are indeed real factors in a merchant marine, and as naval auxiliaries."

Yet he knew that the British Government loaned the Cunard Line the entire amount of money necessary to build these ships at an interest of 2¾ per cent and gave it a naval subvention and mail contract of over a million dollars a year for a period of 20 years, thus enabling the company to pay off the entire cost of the ships and leave a large surplus besides. It is incredible that he did not know that these ships were only of 26 knots speed and no larger than the two vessels now being constructed by the United States Lines for use as cabin liners.

Now, to return to the criticized Dollar contracts:

True neither of these contracts requires the building of new ships—but what happened? No sooner had these lines passed into the hands of private American citizens then the great Canadian Pacific Railroad began the building of two ships, larger, faster, and more efficient than the ships which had been purchased by the Dollars from our Government. That, of course, necessitated the building of faster vessels by the Dollar Co.; and already one of these needed ships has been launched; another is on the stocks; two more soon will follow them; and still two more are being contemplated because maritime knowledge indicates that they will be needed. Now, to refer only to the two ships at present being completed, saying nothing of those that will follow. These two ships will cost in the vicinity of $15,000,000, or at least $6,000,000 more than they would cost if built abroad. This means that these ships must carry an extra annual burden, created by extra investment, of extra depreciation, extra interest, and extra insurance, three burdens commonly figured at a total of 15 per cent, or at least $900,000 per year, or $9,000,000 during the 10-year period referred to in this criticism. In addition to that, and still ignoring the fact that two more vessels will shortly be built, to be followed by two more, a matter of mere business necessity regardless of contract compulsion, we have $9,000,000 out of that $27,000,000 "mail subsidy" used up in the extra overhead expenses of these two vessels alone—expenses which foreign competitors do not have to bear; and the balance is not for the benefit of these two vessels alone but for the two trans-Pacific fleets which the Dollars now are operating. The 5-year period of guaranteed service for which these Government-built vessels were sold will soon have passed, and were it not that mail pay makes it profitable to operate these ships in foreign trade their owners could put them into some domestic trade.

Whether or not the Postmaster General is paying too much under the provisions set forth in the act of 1928 can not be decided justly on a mere figuring of actual expenses and income at any particular time. This fact has recently been again demon-

strated. No one would claim that the actual figures appearing during an exceptionally prosperous year should be made the general rule, any more than he would contend that the needs of those vessels under the depressing conditions which have prevailed for the past year or so, should be the guide. Knowledge of shipping and a sound judgment furnish the safest guide. Mere figures may lead one far astray. It is wiser to overpay than to underpay. This is something the British Government always has understood, and their legislators have set precedents which it would be well for us all to consider with care. You can't build up a new service to maximum strength in 1 year or 5 years or 10 years. It takes a long time to develop reliable good will; for the owners of ships to get themselves entrenched in business; to make investments in the various countries they serve and so get a first-hand grip on business there—a fact brought out so emphatically by the presidents of the great Royal Mail and the Furness Withy Cos. at their annual meetings with the stockholders of those companies, where they pointed out that despite the terribly depressed ocean conditions, the income from those great investments which their companies had made in prosperous years, meaning those years before American ships began to come back on the ocean, and when freight rates were, as Sir Frederick Lewis stated in his recent annual address, 22 per cent higher than they are now, is sufficient to enable these British shipping companies to continue paying dividends.

Let us look at those British precedents. When Great Britain determined to establish the Cunard Line she granted that company a mail subsidy equivalent to 25 per cent per year on the value of that entire fleet—something which we haven't even begun to approach. When the Royal Mail was being established a subsidy of one and one-quarter million dollars per year was given to that fleet of little tumblebug steamers, supposed to be able to achieve 8½ knots per hour, and at the end of the first year, when in spite of that then great subsidy those ships showed a loss, Britain increased their compensation to $1,350,000. When, during the succeeding nine years seven of their ships were lost Great Britain continued to pay that increased subsidy of $1,350,000 and relieved the company from a large part of its contractual obligations by reducing the required number of sailings one-half. When the Peninsular, which later became the Peninsular & Oriental Steamship Co., was founded, in addition to its mail contracts Parliament appropriated one-half million dollars to be drawn upon as necessary whenever the income of stockholders should fall below 6 per cent.

Now, contrast all that with the governmental treatment which has been accorded American shipping. When the Collins Line was established in the forties Britain met that challenge by increasing the compensation to Cunard until it was double the original amount to defeat the American ships. Then Cunard first cut the freight rates in half and then cut them in the middle again, making the rates only one-quarter what they had been before our American ships appeared. Apparently Congress never perceived the great advantage to American commerce, to American producers and importers which this tremendous reduction in freight rates brought about solely by the advent of American ships, had produced; never realized that this saving in transportation costs and great resultant benefits to American commerce amounted to far more than that comparatively low mail subsidy cost the country; and so, when two of the Collins Line's ships were lost, instead of standing by the enterprise, as the British Government did in the Royal Mail case where seven of their ships had been lost, the American Government cut the compensation in half and finally withdrew it, and thus that great American line was wiped off the ocean.

Then came the ocean mail act of 1891. When the late Senator Frye reported that mail bill, he had been hard at work with practical shipping men. Knowing the opposition he would have to meet, he had insisted that they skin their prices down to the very bone. They did. He then came in with a recommendation of $6 per mile for mail ships of 20 knots speed. At once these thesis writers, who are always so verbally active but never put a dollar into shipping, got to work, and they succeeded in convincing Congress that $6 was too much money. They succeeded in getting the price cut to $4. Senator Frye warned them that at that figure no company could survive. But he was not listened to. The theorists had the floor. The price was cut to $4, and the American line, which had been established, in due time disappeared from the sea. Not a single replacement ever was or ever could be made for that line.

One trouble with every attempt to get American shipping legislation, so far as a somewhat extended observation goes, has been the appearance of so-called economists who seem to fear that some shipowner will somehow make enough money out of the business to buy himself a second shirt. Great Britain was always willing that her shipping men should not only be well clothed, but should make money enough out of their services to enable them to build up interests in foreign countries, thereby securing enlarged markets for her products and insuring her the greatest merchant fleet in the world.

A comparison of the ships, which the Dollars are building, though not obligated so to do by any mail contract, with those Government-built ships which they now have in service, is very informative. Their present ships are of 14,119 gross tons. Their new ships are of 23,000 tons. Their present ships have a speed of 17 knots; their new ships have a speed of 20 knots. Their present ships can accommodate 535 passengers; their new ships will accommodate 1,214 passengers.

Regardless of what those mail contracts may not have required, the records show that, instead of only 12 new vessels, which appeared to be all Mr. Nicolson could discover as the result of those "amazing subsidies" granted American steamship companies now receiving mail pay, already have built or now are building in American shipyards 39 vessels, totaling approximately 463,000 tons, and costing approximately $162,500,000. They have received bids for four additional vessels of approximately 18,500 tons, to cost approximately $8,000,000. They have under consideration for early construction 22 vessels of approximately 314,000 tons, to cost approximately $104,000,000.

In addition to these new vessels, there have been reconditioned 18 vessels of over 129,000 tons at an expenditure in excess of $3,000,000, making a grand total of 83 vessels of 924,500 tons, to cost $277,500,000, practically every dollar of which vast sum goes to American labor.

The value of these magnificent ships in protecting and developing the trade of this country with foreign nations, to say nothing of their value for purposes of national defense, can not be expressed in mere dollars; but even their operation and upkeep will furnish employment to thousands of Americans.

According to this thesis, about everybody having had anything to do with the mail act of 1928 or its administration is wrong. Congress passed the wrong kind of a law, and while thinking of aiding ships achieved a dubious statute which destroyed all previous aids and authorized the Postmaster General to pay American vessels nothing more than the international postage rate.

The Postmaster General is wrong because he has "elected" to pay out millions of dollars to American shipowners when he didn't have to pay them a cent beyond the compensation fixed by foreign nations.

The Shipping Board is wrong as usual, making recommendations without due investigation or consideration, and not even putting its certifications in proper form, while these shipowners are just plain highjackers, jimmying the United States Treasury with voidable contracts and lugging off truck loads of gold, while those useless guardians, the Shipping Board and Postmaster General, quietly sleep on their beats.

Nevertheless, somehow these incompetent blunderers or worse have achieved net savings to the Government of millions of dollars, and these highjacking mail grabbers have already spent, or are preparing to spend in American shipyards, some $277,500,000 for nearly a million tons of shipping, practically every dollar of which vast sum goes to American labor and touches on the industries of 48 States, and American commerce is thus being given such practical assistance as it never has known before.

Since these alleged intemperate acts have produced such magnificent results, wouldn't the reply that President Lincoln made to certain officious critics of General Grant's alleged habits be very applicable here?

JANUARY 21, 1931.

TOMBIGBEE RIVER BRIDGE, AT FULTON, MISS.

Mr. STEPHENS. Mr. President, there is on the calendar Senate bill 5722, providing for the construction of a bridge across Tombigbee River at or near Fulton, Miss. There is also on the calendar House bill 15138, which is identical with the Senate bill. I ask unanimous consent that the House bill may be considered, and if that bill shall be passed I will then move that the Senate bill be indefinitely postponed.

The PRESIDENT pro tempore. Is there objection?

There being no objection, the bill (H. R. 15138) granting the consent of Congress to the State Highway Commission and the Board of Supervisors of Itawamba County, Miss., to construct a bridge across Tombigbee River at or near Fulton, Miss., was read, considered, ordered to a third reading, read the third time, and passed.

Mr. STEPHENS. I now move that the bill (S. 5722) granting the consent of Congress to the State Highway Commission and the Board of Supervisors of Itawamba County, Miss., to construct a bridge across Tombigbee River at or near Fulton, Miss., be indefinitely postponed.

The motion was agreed to.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives by Mr. Haltigan, one of its clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the President pro tempore:

S. 196. An act to provide for uniform administration of the national parks by the United States Department of the Interior, and for other purposes; and

S. 4149. An act to add certain lands to the Ashley National Forest in the State of Wyoming.

AGRICULTURAL DEPARTMENT APPROPRIATIONS

The Senate resumed the consideration of the bill (H. R. 15256) making appropriations for the Department of Agri-

culture for the fiscal year ending June 30, 1932, and for other purposes.

Mr. McNARY. Mr. President, preceding the consideration of the committee amendments, I ask unanimous consent to have inserted in the RECORD a summary report which I submitted when the bill was reported from the Committee on Appropriations.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The report (No. 1268) is as follows:

The Committee on Appropriations, to which was referred the bill (H. R. 15256) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1932, and for other purposes, reports the same to the Senate with various amendments, and presents herewith information relative to the changes made:

Amount of bill as passed House	$213,055,702.00
Amount added by Senate	908,968.00
Amount of bill as reported to Senate	213,964,670.00
Amount of regular and supplemental estimates for 1932	213,919,040.00
Amount of appropriations for 1931	161,527,038.50
The bill as reported to Senate:	
Exceeds the appropriations for 1931	52,437,631.50
Exceeds the estimates for 1932	45,630.00

The changes in the amounts of the House bill recommended by the committee are as follows:

INCREASE

The following increases have been granted by your committee, within the estimates for 1932, making 30 per cent allowances to employees in underaverage grades:

Office of the Secretary:	
Salaries	$5,840
Compensation, mechanical shops, and power plant	1,000
Total, office of the Secretary	6,840
Office of Information:	
Salaries and expenses	3,960
Library, Department of Agriculture:	
Salaries and expenses	1,020
Grand total, office of the Secretary	11,820
Weather Bureau:	
General administration expenses	1,000
General weather service and research	30,320
Horticultural protection	800
Aerology	8,260
Total, Weather Bureau	40,380
Bureau of Animal Industry:	
General administrative expenses	2,750
Inspection and quarantine	9,730
Eradication of tuberculosis, operating expenses	14,100
Eradicating cattle ticks	3,740
Animal husbandry investigations	4,030
Investigations in animal diseases	2,920
Investigating and eradicating and control of hog cholera	6,550
Eradicating dourine	190
Packers and stockyards administration	4,930
Meat inspection	88,650
Total, Bureau of Animal Industry	137,590
Bureau of Dairy Industry:	
General administration	400
Bureau of Plant Industry:	
Administration and miscellaneous	1,094
Mycology and disease survey	380
Citrus canker eradication	100
Blister rust control	300
Plant nutrition	200
Rubber, fiber, and other tropical plants	637
Drug and related plants	220
Nematology	520
Seed laboratory	520
Barberry eradication	460
Tobacco	620
Botany	420
Phony peach eradication	180
Gardens and grounds	960
Arlington experiment farm	420
Biophysical laboratory	300
Total, Bureau of Plant Industry	7,331
Bureau of Chemistry and Soils:	
General administration	$755
Color investigations	880
Sirup and sugar investigations	275
Insecticides and fungicides investigations	800
Dust explosions and farm fires	585
Naval stores investigations	224
Soil chemistry	410
Soil physics	355
Soil bacteriology	330
Total, Bureau of Chemistry and Soils	4,614
Bureau of Biological Survey:	
Administrative expenses	340
Bureau of Public Roads:	
Highway investigations	900
Bureau of Agricultural Economics:	
Enforcement of United States grain standards act	3,531
Administration of United States warehouse act	700
Total, Bureau of Agricultural Economics	4,231
Bureau of Home Economics:	
General administrative expenses	320
Home economics investigations	360
Total, Bureau of Home Economics	680
Plant Quarantine and Control Administration:	
Enforcement of foreign plant quarantines	870
Transit inspection	200
Preventing spread of date scale	50
Preventing spread of thurberia weevil	150
Preventing spread of white pine blister rust	200
Preventing spread of Mexican fruit worm	40
Certification of exports	200
Total, Plant Quarantine and Control Administration	1,710
Grain Futures Administration:	
Enforcement grain futures act	1,020
Food and Drug Administration:	
General administrative expenses	230
Enforcement of food and drugs act	9,135
Enforcement of the tea importation act	350
Enforcement of the naval stores act	270
Enforcement of the insecticide act	1,577
Enforcement of the milk importation act	602
Enforcement of the caustic poison act	260
Total, Food and Drug Administration	12,424
Miscellaneous items:	
Experiments in livestock production in southern United States	380
Total increase to provide promotions in under-average grades	223,820
Weather Bureau:	
Collecting and disseminating meteorological, climatological, and other information—	
Weather station at Missoula, Mont	10,000
Forest weather research	8,000
Maintenance of stations for observing, measuring, and investigating atmospheric phenomena, etc.—	
Extension of airway weather service in Alaska	4,240
Airway work from Boston, Mass., to Washington, D. C	10,160
Total, Weather Bureau	32,400
Bureau of Plant Industry:	
Animal husbandry (poultry investigations, work relating to quality of eggs, etc.)	10,000
Bureau of Plant Industry:	
Forest pathology—	
Preliminary investigations relating to the Dutch elm	1,668
Investigations pertaining to hardwoods and heart rot	12,520
Blister rust control—	
Blister rust control work in the West	25,000
Drug and related plants—	
Study of downy mildew in hops	20,000
Botany—	
Investigations pertaining to blueberries	5,000
Weed investigations including perennial peppergrass	5,720

Bureau of Plant Industry—Continued.	
Dry-land agriculture—	
Horticultural experiment station, Cheyenne, Wyo	$16,920
Western irrigation agriculture—	
Experimental station at Hermiston, Oreg	35,000
Horticultural crops and diseases—	
Studies concerning processing and handling of dates	15,000
Experiments and studies concerning pears	10,000
Experiments concerning citrus fruits, coloring thereof, etc	5,000
Investigations concerning grapes in the Gulf and South Atlantic States	10,000
Investigations of the many problems concerned in the production of annual crops of high quality of fruits, such as apples, pears, plums, cherries, etc	25,000
Nut investigations, continuation of scouting works	5,000
Total, Bureau of Plant Industry	191,828
Forest Service:	
Blister rust control in the national forests	50,000
Forest management, experimental substation in North Dakota	15,000
Forest products—	
To develop an antishrink treatment of wood	15,000
To improve the use of wood in frame buildings	10,000
Investigative methods to improve the lasting qualities of paints on wood	8,700
Total, Forest Service	98,700
Bureau of Chemistry and Soils:	
Field laboratory for naval stores research work	10,000
Bureau of Entomology:	
Control of the Argentine ant	13,620
Investigations for bean beetle in New Mexico	5,000
Investigations concerning tobacco moth	10,000
Total, Bureau of Entomology	28,620
Bureau of Agricultural Economics:	
Forester to make studies of forest-land utilization and other forestry matters in Europe	12,500
Market inspection of canned fruits	30,000
Market news service—	
Local office at Louisville, Ky	13,500
Service at Ogden, Utah	2,600
Service pertaining to tobacco	30,000
Total, Bureau of Agricultural Economics	88,600
Plant quarantine and control administration:	
Control and prevention of European corn borer	210,000
Soil-erosion investigations:	
Studies in southwestern region of the United States	15,000
Increase	685,148
Increase to provide promotions in under-average grades	223,820
Total increase	908,968
Amount of bills as reported to the Senate	213,964,670

The Chief Clerk proceeded to read the bill.

The first amendment of the Committee on Appropriations was, under the heading "Office of the Secretary, salaries," on page 2, line 7, after the word "field," to strike out "$763,815" and insert "$769,655," so as to read:

For Secretary of Agriculture, $15,000; Assistant Secretary, and for other personal services in the District of Columbia, including $7,294 for extra labor and emergency employments, and for personal services in the field, $769,655.

The amendment was agreed to.

The next amendment was, on page 2, line 7, to increase the total appropriation for salaries in the office of the Secretary of Agriculture from $778,815 to $784,655.

The amendment was agreed to.

The next amendment was, on page 2, line 8, to increase the amount which may be expended for personal services in the District of Columbia, under the office of the Secretary of Agriculture, from $750,815 to $756,055.

The amendment was agreed to.

The next amendment was, on page 4, line 19, before the word "of," to strike out "$125,000" and insert "$126,000," so as to read:

For salaries and compensation of necessary employees in the mechanical shops and power plant of the Department of Agriculture, $126,000, of which $9,780 shall be immediately available.

The amendment was agreed to.

The next amendment was, on page 6, line 4, to increase the total appropriation for the office of the Secretary of Agriculture from $1,263,015 to $1,269,855.

The amendment was agreed to.

The next amendment was, under the subhead "Office of Information, salaries and general expenses," on page 6, line 16, before the word "of," to strike out "$420,961" and insert "$424,921," so as to read:

For necessary expenses in connection with the publication, indexing, illustration, and distribution of bulletins, documents, and reports, including labor-saving machinery and supplies, envelopes, stationery and materials, office furniture and fixtures, photographic equipment and materials, artists' tools and supplies, telephone and telegraph service, freight and express charges; purchase and maintenance of bicycles; purchase of manuscripts; traveling expenses; electrotypes, illustrations, and other expenses not otherwise provided for, $424,921.

The amendment was agreed to.

The next amendment was, on page 6, line 17, after the word "exceed," to strike out "$395,960" and insert "$399,920," so as to read:

Of which not to exceed $399,920 may be used for personal services in the District of Columbia in accordance with the classification act of 1923 as amended.

The amendment was agreed to.

The next amendment was, on page 7, line 16, to increase the total appropriation for the Office of Information from $1,420,961 to $1,424,921.

The amendment was agreed to.

The next amendment was, on page 7, line 17, after the word "exceed," to strike out "$395,960" and insert "$399,920," so as to read:

Of which amount not to exceed $399,920 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the subhead "Library, Department of Agriculture," on page 8, line 6, before the word "of," to strike out "$110,620" and insert "$111,640," so as to read:

Salaries and expenses: For purchase and exchange of books of reference, law books, technical and scientific books, periodicals, and for expenses incurred in completing imperfect series; not to exceed $1,200 for newspapers, and when authorized by the Secretary of Agriculture for dues for library membership in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; for salaries in the city of Washington and elsewhere; for official traveling expenses, and for library fixtures, library cards, supplies, and for all other necessary expenses, $111,640.

The amendment was agreed to.

The next amendment was, on page 8, line 7, after the word "exceed," to strike out "$74,120" and insert "$75,140," so as to read:

Of which amout not to exceed $75,140 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, on page 15, line 24, to increase the grand total appropriation for the office of the Secretary of Agriculture from $13,414,566 to $13,426,386.

The amendment was agreed to.

The next amendment was, under the heading "Weather Bureau, salaries and general expenses," on page 17, line 24, after the name "District of Columbia," to strike out "$137,680" and insert "$138,680," so as to read:

For necessary expenses for general administrative purposes, including the salary of chief of bureau and other personal services in the District of Columbia, $138,680.

The amendment was agreed to.

The next amendment was, on page 18, line 8, before the word "of," to strike out "$2,577,200" and insert "$2,625,520," so as to read:

For necessary expenses incident to collecting and disseminating meteorological, climatological, and marine information, and for investigations in meteorology, climatology, seismology, evaporation, and aerology in the District of Columbia and elsewhere, including $4,650 for investigations of the relationship of weather conditions to forest fires, under section 6 of the act approved May 22, 1928 (U. S. C., Supp. III, title 16, sec. 581e), $2,625,520, of which not to exceed $800 may be expended for the contribution of the United States to the cost of the office of the secretariat of the International Meteorological Committee, not to exceed $30,000 which shall be immediately available for the construction of a building and suitable facilities to replace the existing Weather Bureau building and facilities at Tatoosh Island, Wash., including the employment of architectural services by contract or otherwise, and not to exceed $10,000 may be expended for the maintenance of a printing office in the city of Washington for the printing of weather maps, bulletins, circulars, forms, and other publications:

The amendment was agreed to.

The next amendment was, on page 18, line 25, after the word "interests," to strike out "$65,500" and insert "$66,300," so as to read:

For investigations, observations, and reports, forecasts, warnings, and advices for the protection of horticultural interests, $66,300.

The amendment was agreed to.

The next amendment was, on page 19, line 4, after the word "elsewhere," to strike out "$1,705,100" and insert "$1,727,760," so as to read:

For the maintenance of stations, for observing, measuring, and investigating atmospheric phenomena, including salaries and other expenses, in the city of Washington and elsewhere, $1,727,760.

The amendment was agreed to.

The next amendment was, on page 19, line 5, to increase the total appropriation for the Weather Bureau from $4,485,480 to $4,558,260.

The amendment was agreed to.

The next amendment was, on page 19, line 6, after the word "exceed," to strike out "$540,940" and insert "$543,580," so as to read:

Of which amount not to exceed $543,580 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the heading "Bureau of Animal Industry, salaries and general expenses," on page 21, line 10, after the name "District of Columbia" to strike out "$185,575" and insert "$188,325," so as to read:

For necessary expenses for general administrative purposes, including the salary of chief of bureau and other personal services in the District of Columbia, $188,325.

The amendment was agreed to.

The next amendment was, on page 21, line 22, to strike out "$798,720" and insert "$808,450," so as to read:

For inspection and quarantine work, including all necessary expenses for the eradication of scabies in sheep and cattle, the inspection of southern cattle, the supervision of the transportation of livestock, and the inspection of vessels, the execution of the 28-hour law, the inspection and quarantine of imported animals, including the establishment and maintenance of quarantine stations and repairs, alterations, improvements, or additions to buildings thereon; the inspection work relative to the existence of contagious diseases, and the mallein testing of animals, $808,450.

The amendment was agreed to.

The next amendment was, on page 22, line 5, after the word "authorities" to strike out "$6,505,800" and insert "$6,519,900," so as to read:

For investigating the diseases of tuberculosis and paratuberculosis of animals, and avian tuberculosis, for their control and eradication, for the tuberculin testing of animals, and for researches concerning the causes of the diseases, their modes of spread, and methods of treatment and prevention, including demonstrations, the formation of organizations, and such other means as may be necessary, either independently or in cooperation with farmers, associations, or State, Territory, or county authorities, $6,519,900.

The amendment was agreed to.

The next amendment was, on page 22, line 6, after the words "of which," to strike out "$1,255,800" and insert "$1,269,900," so as to read:

Of which $1,269,900 shall be set aside for administrative and operating expenses.

The amendment was agreed to.

The next amendment was, on page 23, line 24, to increase the appropriation for all necessary expenses for the eradication of southern cattle ticks from $771,900 to $775,640.

The amendment was agreed to.

The next amendment was, on page 24, line 17, before the word "of," to strike out "$723,400" and insert "$737,430," so as to read:

Animal husbandry: For all necessary expenses for investigations and experiments in animal husbandry; for experiments in animal feeding and breeding, including cooperation with the State agricultural experiment stations, including repairs and additions to and erection of buildings absolutely necessary to carry on the experiments, including the employment of labor in the city of Washington and elsewhere, rent outside of the District of Columbia, and all other necessary expenses, $737,430, of which $32,495 shall be immediately available, including $12,500 for livestock experiments and demonstrations at Big Springs, and/or elsewhere in Texas, to be available only when the State of Texas, or other cooperating agency in Texas shall have appropriated an equal amount, or, in the opinion of the Secretary of Agriculture, shall have furnished its equivalent in value in cooperation for the same purpose during the fiscal year ending June 30, 1932:

The amendment was agreed to.

The next amendment was, on page 25, line 1, before the word "may," to strike out "$181,320" and insert "$191,320," so as to make the proviso read:

Provided, That of the sum thus appropriated $191,320 may be used for experiments in poultry feeding and breeding.

The amendment was agreed to.

The next amendment was, on page 25, line 10, after the word "products," to strike out "$460,000" and insert "$462,920," so as to make the paragraph read:

Diseases of animals: For all necessary expenses for scientific investigations of diseases of animals, including not to exceed $15,000 for the construction of necessary buildings at Beltsville, Md., the maintenance and improvement of the bureau experiment station at Bethesda, Md., and the necessary alterations of buildings thereon, and the necessary expenses for investigations of tuberculine, serums, antitoxins, and analogous products, $462,920, of which $13,000 shall be immediately available.

The amendment was agreed to.

The next amendment was, on page 25, line 20, after the word "authorities," to strike out "$499,480" and insert "$506,030," so as to read:

For investigating the disease of hog cholera, and for its control or eradication by such means as may be necessary, including demonstrations, the formation of organizations, and other methods, either independently or in cooperation with farmers' associations, State or county authorities, $506,030.

The amendment was agreed to.

The next amendment was, on page 26, line 7, after the word "dourine," to strike out "$32,800" and insert "$32,990," so as to read:

For all necessary expenses for the investigation, treatment, and eradication of dourine, $32,990.

The amendment was agreed to.

The next amendment, was, on page 26, line 11, to strike out "$402,880," and insert "$407,810," so as to read:

Packers and stockyards act: For necessary expenses in carrying out the provisions of the packers and stockyards act, approved August 15, 1921 (U. S. C., title 7, secs. 181–229), $407,810: *Provided*, That the Secretary of Agriculture may require reasonable bonds from every market agency and dealer, under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any registrant is insolvent or has violated any provision of said act he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary of Agriculture or a court of competent jurisdiction.

The amendment was agreed to.

The next amendment was, on page 27, at the end of line 6, to increase the appropriation for salaries and expenses of the Bureau of Animal Industry from $10,380,555 to $10,439,495.

The amendment was agreed to.

The next amendment was, on page 27, line 14, after the word "manufacture," to strike out "$2,661,140" and insert "$2,749,790," so as to read:

For additional expenses in carrying out the provisions of the meat inspection act of June 30, 1906 (U. S. C., title 21, sec. 95), as amended by the act of March 4, 1907 (U. S. C., title 21, secs. 71-94), and as extended to equine meat by the act of July 24, 1919 (U. S. C., title 21, sec. 96), including the purchase of tags, labels, stamps, and certificates printed in course of manufacture, $2,749,790.

The amendment was agreed to.

The next amendment was, on page 28, line 24, to increase the total appropriations for the Bureau of Animal Industry from $13,041,695 to $13,189,285.

The amendment was agreed to.

The next amendment was, on page 28, line 25, after the word "exceed," to strike out "$887,260" and insert "900,020," so as to read:

"Of which amount not to exceed $900,020 may be expended for departmental personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the heading "Bureau of Dairy Industry, salaries and general expenses," on page 29, line 12, after the name "District of Columbia," to strike out "$69,580" and insert "$69,980," so as to read:

For necessary expenses for general administrative purposes, including the salary of chief of bureau and other personal services in the District of Columbia, $69,980.

The amendment was agreed to.

The next amendment was, on page 29, line 23, to increase the total appropriation for the Bureau of Animal Industry from $796,990 to $797,390.

The amendment was agreed to.

The next amendment was, on page 29, line 24, after the word "exceed," to strike out "$349,070" and insert "$349,470," so as to read:

Of which amount not to exceed $349,470 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the heading "Bureau of Plant Industry," on page 30, at the end of line 21, to strike out "$210,266" and insert "$211,360," so as to read:

For necessary expenses for general administrative purposes, including the salary of chief of bureau and other personal services in the District of Columbia, $211,360.

The amendment was agreed to.

The next amendment was, on page 30, line 25, to strike out "$59,960" and insert "$60,340," so as to read:

Mycology and disease survey: For mycological collections and the maintenance of a plant-disease survey, $60,340.

The amendment was agreed to.

The next amendment was, on page 31, line 11, after the word "purposes," to strike out "$40,000" and insert "$40,100," so as to read:

Citrus canker eradication: For conducting such investigations of the nature and means of communication of the disease of citrus trees known as citrus canker, and for applying such methods of eradication or control of the disease as in the judgment of the Secretary of Agriculture may be necessary, including the payment of such expenses and the employment of such persons and means, in the city of Washington and elsewhere, and cooperation with such authorities of the States concerned, organizations of growers, or individuals, as he may deem necessary to accomplish such purposes, $40,100, and, in the discretion of the Secretary of Agriculture, no expenditures shall be made for these purposes until a sum or sums at least equal to such expenditures shall have been appropriated, subscribed, or contributed by State, county, or local authorities, or by individuals or organizations for the accomplishment of such purposes.

The amendment was agreed to.

The next amendment was, on page 32, line 3, before the word "for," to strike out "$112,480" and insert "$125,000," and at the end of line 5 to strike out "$211,052" and insert "$225,240," so as to make the paragraph read:

Forest pathology: For the investigation of diseases of forest and ornamental trees and shrubs, including a study of the nature and habits of the parasitic fungi causing the chestnut-tree bark diseases, the white-pine blister rust, and other epidemic tree diseases, for the purpose of discovering new methods of control and applying methods of eradication or control already discovered, and including $125,000 for investigations of diseases of forest trees and forest products, under section 3 of the act approved May 22, 1928 (U. S. C., Supp. III, title 16, sec. 581b), $225,240.

The amendment was agreed to.

The next amendment was, on page 32, line 20, after the word "purposes," to strike out "$456,000" and insert "$481,300," so as to read:

Blister-rust control: For applying such methods of eradication or control of the white-pine blister rust as in the judgment of the Secretary of Agriculture may be necessary, including the payment of such expenses and the employment of such persons and means in the city of Washington and elsewhere, in cooperation with such authorities of the States concerned, organizations, or individuals as he may deem necessary to accomplish such purposes, and in the discretion of the Secretary of Agriculture no expenditures shall be made for these purposes until a sum or sums at least equal to such expenditures shall have been appropriated, subscribed, or contributed by State, county, or local authorities, or by individuals or organizations for the accomplishment of such purposes, $481,300.

The amendment was agreed to.

The next amendment was, on page 32, line 23, to increase the appropriation for plant-nutrition investigation from $18,050 to $18,250.

The amendment was agreed to.

The next amendment was, on page 33, line 10, to strike out "$140,463" and insert "$141,100," so as to read:

Rubber, fiber, and other tropical plants: For investigation of crops introduced from tropical regions, and for the improvement of rubber, abaca, and other fiber plants by cultural methods, breeding, acclimatization, adaptation, and selection, and for investigation of their diseases, and for determining the feasibility of increasing the production of hard fibers outside of the continental United States, $141,100.

The amendment was agreed to.

The next amendment was, on page 33, at the end of line 13, to strike out "$38,340" and insert "$58,560," so as to read:

Drug and related plants: For the investigation, testing, and improvement of plants yielding drugs, spices, poisons, oils, and related products and by-products, $58,560.

The amendment was agreed to.

The next amendment was, on page 33, at the end of line 16, to strike out "$58,260" and insert "$58,780," so as to read:

Nematology: For crop technological investigations, including the study of plant-infesting nematodes, $58,780.

The amendment was agreed to.

The next amendment was, on page 34, line 4, after the word "purposes," to strike out "$78,220" and insert "$78,740," so as to read:

Seed laboratory: For studying and testing commercial seeds, including the testing of samples of seeds of grasses, clover, or alfalfa, and lawn-grass seeds secured in the open market, and where such samples are found to be adulterated or misbranded the results of the tests shall be published, together with the names of the persons by whom the seeds were offered for sale, and for carrying out the provisions of the act approved August 24, 1912 (U. S. C., title 7, secs. 111–114), entitled "An act to regulate foreign commerce by prohibiting the admission into the United States of certain adulterated grain and seeds unfit for seeding purposes," $78,740.

The amendment was agreed to.

The next amendment was, on page 34, line 26, after the word "purposes," to strike out "$377,140" and insert "$377,600," so as to read:

Barberry eradication: For the eradication of the common barberry and for applying such other methods of eradication and control of cereal rusts as in the judgment of the Secretary of Agriculture may be necessary, including the payment of such expenses and the employment of such persons and means, in the city of Washington and elsewhere, and cooperation with such authorities of the States concerned, organizations of growers, or individuals, as he may deem necessary to accomplish such purposes, $377,600.

The amendment was agreed to.

The next amendment was, on page 35, line 11, to strike out "$91,000" and insert "$91,620," so as to read:

Tobacco: For the investigation and improvement of tobacco and the methods of tobacco production and handling, $91,620.

The amendment was agreed to.

The next amendment was, on page 35, at the end of line 17, to strike out "$54,280" and insert "$65,420," so as to read:

Botany: For investigation, improvement, and utilization of wild plants and grazing lands, and for determining the distribution of weeds and means of their control, $65,420.

The amendment was agreed to.

The next amendment was, on page 35, line 21, after the word "conditions," to strike out "$338,820" and insert "$355,740," so as to read:

Dry-land agriculture: For the investigation and improvement of methods of crop production under subhumid, semiarid, or dry-land conditions, $355,740.

The amendment was agreed to.

The next amendment was, on page 35, line 22, after the word "That," to strike out "$73,080" and insert "$90,000," so as to make the proviso read:

Provided, That $90,000, including construction of physical improvements, shall be available for the horticultural experiment station at Cheyenne, Wyo.

The amendment was agreed to.

The next amendment was, on page 36, line 11, after the word "regions," to strike out "$153,940" and insert "$188,940," so as to read:

Western irrigation agriculture: For investigations in connection with western irrigation agriculture, the utilization of lands reclaimed under the reclamation act, and other areas in the arid and semiarid regions, $188,940.

The amendment was agreed to.

The next amendment was, on page 36, line 22, after the word "storage," to strike out "$1,365,360" and insert "$1,435,360," so as to read:

Horticultural crops and diseases: For investigation and control of diseases, for improvement of methods of culture, propagation, breeding, selection, and related activities concerned with the production of fruits, nuts, vegetables, ornamentals, and related plants, for investigation of methods of harvesting, packing, shipping, storing, and utilizing these products, and for studies of the physiological and related changes of such products during processes of marketing and while in commercial storage, $1,435,360, of which $15,000 shall be available toward the establishment, including the erection of buildings, of a pecan experiment station in the middle eastern Mississippi region when the State of Mississippi and/or other local cooperating agency shall have deeded to the Government 100 acres of land acceptable to the Secretary of Agriculture for such purposes.

The amendment was agreed to.

The next amendment was, on page 37, line 14, after the word "purposes," to strike out "$85,000" and insert "$85,180," so as to read:

Phony peach eradication: For conducting such investigations of the nature and means of communication of the disease of peach trees known as phony peach, and for applying such methods of eradication or control of the disease as in the judgment of the Secretary of Agriculture may be necessary, including the payment of such expenses and the employment of such persons and means, in the city of Washington and elsewhere, and cooperation with such authorities of the States concerned, organizations of growers, or individuals, as he may deem necessary to accomplish such purposes, $85,180, and, in the discretion of the Secretary of Agriculture, no expenditures shall be made for these purposes until a sum or sums at least equal to such expenditures shall have been appropriated, subscribed, or contributed, by State, county, or local authorities, or by individuals or organizations for the accomplishment of such purposes.

The amendment was agreed to.

The next amendment was, on page 38, at the end of line 5, to strike out "$98,120" and insert "$99,080," so as to read:

Gardens and grounds: To cultivate and care for the gardens and grounds of the Department of Agriculture in the city of Washington, including the upkeep and lighting of the grounds and the construction, surfacing, and repairing of roadways and walks; and to erect, manage, and maintain conservatories, greenhouses, and plant and fruit propagating houses on the grounds of the Department of Agriculture in the city of Washington, $99,080.

The amendment was agreed to.

The next amendment was, on page 38, line 11, to strike out "$60,600" and insert "$61,020," so as to read:

Arlington Farm: For continuing the necessary improvements to establish and maintain a general experiment farm and agricultural station on the Arlington estate, in the State of Virginia, in accordance with the provisions of the act of Congress approved April 18, 1900 (31 Stat. 135, 136), $61,020.

The amendment was agreed to.

The next amendment was, on page 39, line, 3, to strike out "$36,420" and insert "$36,720," so as to read:

Biophysical laboratory: For biophysical investigations in connection with the various lines of work herein authorized, $36,720.

The amendment was agreed to.

The next amendment was, on page 39, line 17, to increase the total appropriation for the Bureau of Plant Industry from $5,729,706 to $5,928,865.

The amendment was agreed to.

The next amendment was, on page 39, line 18, after the word "exceed," to strike out "$1,830,889" and to insert "$1,836,500," so as to read:

Of which amount not to exceed $1,836,500 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the subhead "National forest administration," on page 42, line 13, after the name "South Dakota," to strike out "$1,509,546" and insert "$1,559,546," so as to read:

In national forest region 1, Montana, Washington, Idaho, and South Dakota, $1,559,546.

The amendment was agreed to.

The next amendment was, on page 43, line 17, after the word "forests," to strike out "$7,289,240" and insert "$7,339,240," so as to read:

In all, for the use, maintenance, improvement, protection, and general administration of the national forests, $7,339,240, of which $45,000 shall be immediately available.

Mr. SHORTRIDGE. Mr. President, I should like to inquire of the chairman of the committee with respect to the item on page 43, line 17. My inquiry is whether or not there was not evidence which warranted a little further or additional appropriations than that provided in the bill?

Mr. McNARY. Under that item comes the appropriation to combat white-pine blister rust, which was increased $50,000. There was some discussion of a larger sum, I think $180,000; but the committee, after conferring with the Forest Service of the department and with the Bureau of Plant Industry, thought that $50,000 would be all that reasonably could be expended this year. So we increased the item $50,000 over the amount allowed by the House.

Mr. SHORTRIDGE. Very well.

The PRESIDENT pro tempore. The question is on agreeing to the amendment reported by the committee.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 46, line 8, after the word "immediately," to strike out "available" and insert "available,".

The amendment was agreed to.

The next amendment was under the subhead "Forest research," on page 47, at the end of line 24, to strike out "$547,000" and insert "$562,000," so as to read:

Forest management: Fire, silvicultural, and other forest investigations and experiments under section 2, at forest experiment stations or elsewhere, $562,000.

The amendment was agreed to.

The next amendment was, on page 48, at the end of line 7, to strike out "$641,300" and insert "$675,000," so as to read:

Forest products: Experiments, investigations, and tests of forest products under section 8, at the Forest Products Laboratory, or elsewhere, $675,000.

The amendment was agreed to.

The next amendment was, on page 48, line 19, after the word "expenses," to strike out "$13,059,620" and insert "$13,158,320," so as to read:

In all, salaries and expenses, $13,158,320; and in addition thereto there are hereby appropriated all moneys received as contributions toward cooperative work under the provisions of section 1 of the act approved March 3, 1925 (U. S. C., title 16, sec. 572), which funds shall be covered into the Treasury and constitute a part of the special funds provided by the act of June 30, 1914 (U. S. C., title 16, sec. 498).

The amendment was agreed to.

The next amendment was, on page 50, line 25, to increase the total appropriation for the Forest Service from $16,929,620 to $17,028,320.

The amendment was agreed to.

The next amendment was, under the heading "Bureau of Chemistry and Soils, salaries and general expenses," on

page 51, at the end of line 15, to strike out "$59,060" and insert "$59,815," so as to read:

For necessary expenses for general administrative purposes, including the salary of chief of bureau and other personal services in the District of Columbia, $59,815.

The amendment was agreed to.

The next amendment was, on page 52, at the end of line 7, to strike out "$93,460" and insert "$94,340," so as to read:

Color investigations: For investigation and experiment in the utilization, for coloring, medicinal, and technical purposes, of raw materials grown or produced in the United States, in cooperation with such persons, associations, or corporations as may be found necessary, including repairs, alterations, improvements, or additions to a building on the Arlington Experimental Farm, $94,340.

The amendment was agreed to.

The next amendment was, on page 52, at the end of line 11, to strike out "$37,700" and insert "$37,975," so as to read:

Sirup and sugar investigations: For the investigation and development of methods for the manufacture of table sirup and sugar and of methods for the manufacture of sweet sirups by the utilization of new agricultural sources, $37,975.

The amendment was agreed to.

The next amendment was, on page 52, at the end of line 17, to strike out "$128,400" and insert "$129,200," so as to read:

Insecticide and fungicide investigations: For the investigation and development of methods of manufacturing insecticides and fungicides, and for investigating chemical problems relating to the composition, action, and application of insecticides and fungicides, $129,200.

The amendment was agreed to.

The next amendment was, on page 52, line 24, to strike out "$51,700," and insert "$52,285," so as to read:

Plant dust explosions and farm fires: For the investigation and development of methods for the prevention of farm fires and of grain-dust, smut-dust, and other dust explosions not otherwise provided for and resulting fires, including fires in cotton gins and cotton-oil mills, independently or in cooperation with individuals, associations, or corporations, $52,285.

The amendment was agreed to.

The next amendment was, on page 53, line 4, after the word "elsewhere," to strike out "62,306" and insert "$72,530"; in line 5, after the word "which," to strike out "$30,000" and insert "$40,000"; and in line 8, after the word "land," to insert "owned by the United States or," so as to make the paragraph read:

Naval stores investigations: For the investigation and demonstration of improved methods or processes of preparing naval stores, the weighing, handling, transportation, and the uses of same, in cooperation with individuals and companies, including the employment of necessary persons and means in the city of Washington and elsewhere, $72,530, of which $40,000 shall be available for the establishment of a field laboratory for naval stores research work in the pine regions of the South, including erection of buildings, on land owned by the United States or to be donated to the United States for that purpose.

The amendment was agreed to.

The next amendment was, on page 53, at the end of line 15, to strike out "$42,760" and insert "$43,170," so as to read:

Soil chemical investigations: For chemical investigations of soil types, soil composition, and soil minerals, the soil solution, solubility of soil, and all chemical properties of soils in their relation to soil formation, soil texture, and soil productivity, including all routine chemical work in connection with the soil survey, $43,170.

The amendment was agreed to.

The next amendment was, on page 53, at the end of line 20, to strike out "$18,660" and insert "$19,015," so as to read:

Soil physical investigations: For physical investigations of the important properties of soil which determine productivity, such as moisture relations, aerations, heat conductivity, texture, and other physical investigations of the various soil classes and soil types, $19,015.

The amendment was agreed to.

The next amendment was, on page 54, line 11, to strike out "$43,820" and insert "$44,150," so as to read:

Soil-bacteriology investigations: For soil-bacteriology investigations, including the testing of samples procured in the open market, of cultures for inoculating legumes, and if any such samples are found to be impure, nonviable, or misbranded the results of the tests may be published, together with the names of the manufacturers and of the persons by whom the cultures were offered for sale, $44,150.

The amendment was agreed to.

The next amendment was, on page 54, at the end of line 17, to increase the total appropriation for the Bureau of Chemistry and Soils from $1,937,201 to $1,951,815.

The amendment was agreed to.

The next amendment was, on page 54, line 18, after the word "exceed," to strike out "$1,272,956" and insert "$1,277,440," so as to read:

Of which amount not to exceed $1,277,440 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the heading "Bureau of Entomology, salaries and general expenses," on page 55, at the end of line 23, to strike out "$179,415" and insert "$193,035," so as to read:

Subtropical plant insects: For insects affecting tropical, subtropical, and ornamental plants, and including research on the Parlatoria date scale and the Mediterranean and other fruit flies, $193,035.

The amendment was agreed to.

The next amendment was, on page 55, at the end of line 25, to strike out "$419,185" and insert "$424,185," so as to read:

Truck-crop insects: For insects affecting truck crops, including insects affecting tobacco and sugar beets, $424,185.

The amendment was agreed to.

The next amendment was, on page 57, at the end of line 1, to strike out "$126,920" and insert "$136,920," so as to read:

For insects affecting stored products, $136,920, of which $10,000 shall be immediately available.

The amendment was agreed to.

The next amendment was, on page 57, at the end of line 7, to increase the total appropriation for the Bureau of Entomology from $2,840,120 to $2,868,740.

The amendment was agreed to.

The next amendment was, under the heading "Bureau of Biological Survey, salaries and general expenses," on page 57, at the end of line 20, to strike out "$83,280" and insert "$83,620," so as to read:

For necessary expenses for general administrative purposes, including the salary of chief of bureau and other personal services in the District of Columbia, $83,620.

The amendment was agreed to.

The next amendment was, on page 59, line 20, after the word "more," to insert "than," so as to read:

Protection of migratory birds: For all necessary expenses for enforcing the provisions of the migratory bird treaty act of July 3, 1918 (U. S. C., title 16, secs. 703–711), and for cooperation with local authorities in the protection of migratory birds, and for necessary investigations connected therewith, $220,120: *Provided*, That of this sum not more than $20,500 may be used for the enforcement of sections 241, 242, 243, and 244 of the act approved March 4, 1909 (U. S. C., title 18, secs. 391–394), entitled "An act to codify, revise, and amend the penal laws of the United States," and for the enforcement of section 1 of the act approved May 25, 1900 (U. S. C., title 16, sec. 701), entitled "An act to enlarge the powers of the Department of Agriculture, prohibit the transportation by interstate commerce of game killed in violation of local laws, and for other purposes," including all necessary investigations in connection therewith.

The amendment was agreed to.

The next amendment was, on page 60, at the end of line 18, to increase the appropriation for salaries and expenses of the Bureau of Biological Survey from $1,406,490 to $1,406,830.

The amendment was agreed to.

The next amendment was, on page 63, at the end of line 18, to increase the total appropriation for the Bureau of Biological Survey from $2,229,170 to $2,229,510.

The amendment was agreed to.

The next amendment was, on page 63, line 19, after the word "exceed," to strike out "$321,480" and insert "$321,820," so as to read:

Of which amount not to exceed $321,820 may be expended for departmental personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the heading "Bureau of Public Roads, salaries and general expenses," on page 64, line 19, after the word "different," to strike out "localities" and insert "localities" and a semicolon, and at the end of line 22, to strike out "$138,680" and insert "$139,580," so as to make the paragraph read:

For conducting, either independently or in cooperation with State highway departments and other agencies, inquiries in regard to systems of road management, economic studies of highway construction, operation, maintenance, and value, investigations of the best methods of road making, especially by the use of local materials, and studies of types of mechanical plants and appliances used for road building and maintenance and of methods of road repair and maintenance suited to the needs of different localities; for maintenance and repairs of experimental highways, including the purchase of materials and equipment; and for furnishing expert advice on these subjects, $139,580.

The amendment was agreed to.

The next amendment was, on page 64, line 23, to increase the total appropriation for the Bureau of Public Roads from $179,940 to $180,840.

The amendment was agreed to.

The next amendment was, on page 64, line 24, after the word "exceed," to strike out "$99,340" and insert "$100,040," so as to read:

Of which amount not to exceed $100,040 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the heading "Bureau of Agricultural Economics, salaries and general expenses," on page 68, line 16, after the word "agencies," to strike out "$1,187,500" and insert "$1,200,000," so as to read:

Crop and livestock estimates: For collecting, compiling, abstracting, analyzing, summarizing, interpreting, and publishing data relating to agriculture, including crop and livestock estimates, acreage, yield, grades, staples of cotton, stocks, and value of farm crops, and numbers, grades, and value of livestock and livestock products on farms, in cooperation with the Extension Service and other Federal, State, and local agencies, $1,200,000.

The amendment was agreed to.

The next amendment was, on page 70, at the end of line 7, to strike out "$550,026" and insert "$580,026," so as to read:

Market inspection of farm products: For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and/or condition of cotton, tobacco, fruits and vegetables, whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained, $580,026.

The amendment was agreed to.

The next amendment was, on page 70, in line 14, after the word "feeds," to insert "tobacco," and at the end of line 19, to strike out "$1,431,920" and insert "$1,478,020," so as to read:

Market news service: For collecting, publishing, and distributing, by telegraph, mail, or otherwise, timely information on the market supply and demand, commercial movement, location, disposition, quality, condition, and market prices of livestock, meats, fish, and animal products, dairy and poultry products, fruits and vegetables, peanuts and their products, grain, hay, feeds, tobacco, and seeds, and other agricultural products, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, and persons engaged in the production, transportation, marketing, and distribution of farm and food products, $1,478,020.

The amendment was agreed to.

The next amendment was, on page 71, at the end of line 16, to increase the appropriation for salaries and general expenses of the Bureau of Agricultural Economics from $5,635,236 to $5,723,836.

The amendment was agreed to.

The next amendment was, under the subhead "Enforcement of the United States grain standards act," on page 72, at the end of line 20, after the word "elsewhere," to strike out "$860,040" and insert "$863,571," so as to read:

To enable the Secretary of Agriculture to carry into effect the provisions of the United States grain standards act, including rent outside of the District of Columbia and the employment of such persons and means as the Secretary of Agriculture may deem necessary, in the city of Washington and elsewhere, $863,571.

The amendment was agreed to

The next amendment was, under the subhead "Administration of United States warehouse act," on page 73, at the end of line 2, to strike out "$312,200" and insert "$312,900," so as to read:

To enable the Secretary of Agriculture to carry into effect the provisions of the United States warehouse act, including the payment of such rent outside of the District of Columbia and the employment of such persons and means as the Secretary of Agriculture may deem necessary, in the city of Washington and elsewhere, $312,900.

The amendment was agreed to.

The next amendment was, on page 75, line 5, to increase the total appropriation for the Bureau of Agricultural Economics from $7,145,036 to $7,237,867.

The amendment was agreed to.

The next amendment was, on page 75, line 6, after the word "exceed," to strike out "$2,450,430" and insert "$2,471,430," so as to read:

Of which amount not to exceed $2,471,430 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the heading "Bureau of Home Economics, salaries and general expenses," on page 75, line 13, after the name "District of Columbia," to strike out "$28,000" and insert "$28,320," so as to read:

For necessary expenses for general administrative purposes, including the salary of chief of bureau and other personal services in the District of Columbia, $28,320.

The amendment was agreed to.

The next amendment was, on page 75, line 22, after the word "expenses," to strike out "$218,700" and insert "$219,060," so as to read:

For conducting, either independently or in cooperation with other agencies, investigations of the relative utility and economy of agricultural products for food, clothing, and other uses in the home, with special suggestions of plans and methods for the more effective utilization of such products for these purposes, and for disseminating useful information on this subject, including travel and all other necessary expenses, $219,060.

The amendment was agreed to.

The next amendment was, on page 75, line 23, to increase the total appropriation for the Bureau of Home Economics from $246,700 to $247,380.

The amendment was agreed to.

The next amendment was, on page 75, line 24, after the word "exceed," to strike out "$224,990" and insert "$225,670," so as to read:

Of which amount not to exceed $225,670 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the heading "Plant Quarantine and Control Administration, salaries and gen-

eral expenses," on page 76, line 25, after the name "Mexico," to strike out "$799,130" and insert "$800,000," so as to read:

For enforcement of foreign plant quarantines and to prevent the movement of cotton and cottonseed from Mexico into the United States, including the regulation of the entry into the United States of railway cars and other vehicles, and freight, express, baggage, or other materials from Mexico, and the inspection, cleaning, and disinfection thereof, including construction and repair of necessary buildings, plants, and equipment, for the fumigation, disinfection, or cleaning of products, railway cars, or other vehicles entering the United States from Mexico, $800,000, of which $35,000 shall be immediately available.

The amendment was agreed to.

The next amendment was, on page 77, line 11, after the word "thereunder," to strike out "$42,800" and to insert "$43,000," so as to read:

For the inspection in transit or otherwise of articles quarantined under the act of August 20, 1912 (U. S. C., Supp. III, title 7, secs. 161, 164a), as amended, and for the interception and disposition of materials found to have been transported interstate in violation of quarantines promulgated thereunder, $43,000.

The amendment was agreed to.

The next amendment was, on page 77, at the end of line 11, to increase the appropriation for the control and prevention of spread of the Parlatoria date scale from $65,460 to $65,510.

The amendment was agreed to.

The next amendment was, on page 77, at the end of line 25, to increase the appropriation for the control and prevention of spread of the Thurberia weevil from $34,500 to $34,650.

The amendment was agreed to.

The next amendment was, on page 78, at the end of line 4, to increase the appropriation for the control and prevention of spread of the European corn borer from $740,000 to $950,000.

The amendment was agreed to.

The next amendment was, on page 78, line 8, to increase the appropriation for the control and prevention of spread of the white-pine blister rust from $10,200 to $10,400.

The amendment was agreed to.

The next amendment was, on page 78, at the end of line 14, to strike out "$124,960" and insert "$125,000," so as to read:

For the control and prevention of spread of the Mexican fruit worm, including necessary surveys and control operations in Mexico in cooperation with the Mexican Government or local Mexican authorities, $125,000.

The amendment was agreed to.

The next amendment was, on page 78, at the end of line 24, to strike out "$30,300" and insert "$30,500," so as to read:

Certification of exports: For the inspection, under such rules and regulations as the Secretary of Agriculture may prescribe, of domestic fresh fruits, vegetables, and seeds and nursery stock and other plants for propagation when offered for export and to certify to shippers and interested parties as to the freedom of such products from injurious plant diseases and insect pests according to the sanitary requirements of the foreign countries affected and to make such reasonable charges and to use such means as may be necessary to accomplish this object, $30,500.

The amendment was agreed to.

The next amendment was, on page 79, line 5, to increase the total appropriation for the Plant Quarantine and Control Administration from $3,537,930 to $3,749,640.

The amendment was agreed to.

The next amendment was under the heading "Enforcement of the grain futures act," on page 79, line 12, before the word "of," to strike out "$198,980" and insert "$200,000," so as to read:

To enable the Secretary of Agriculture to carry into effect the provisions of the grain futures act, approved September 21, 1922 (U. S. C., title 7, secs. 1–17), $200,000.

The amendment was agreed to.

The next amendment was, on page 79, line 13, after the word "exceed," to strike out "$48,800" and insert "$49,160," so as to read:

Of which amount not to exceed $49,160 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the heading "Food and Drug Administration, salaries and general expenses," on page 80, line 6, to strike out "$105,455" and insert "$105,685," so as to read:

For necessary expenses for general administrative purposes, including the salary of chief of administration and other personal services in the District of Columbia, $105,685.

The amendment was agreed to.

The next amendment was, on page 80, at the end of line 22, to strike out "$1,315,865" and insert "$1,325,000," so as to read:

Enforcement of the food and drugs act: For enabling the Secretary of Agriculture to carry into effect the provisions of the act of June 30, 1906 (U. S. C., title 21, secs. 1–15), entitled "An act for preventing the manufacture, sale or transportation of adulterated, or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes"; to cooperate with associations and scientific societies in the revision of the United States Pharmacopœia and development of methods of analysis, and for investigating the character of the chemical and physical tests which are applied to American food products in foreign countries, and for inspecting the same before shipment when desired by the shippers or owners of these products intended for countries where chemical and physical tests are required before said products are allowed to be sold therein, $1,325,000: *Provided*, That not more than $4,280 shall be used for travel outside of the United States.

The amendment was agreed to.

The next amendment was, on page 81, at the end of line 8, to strike out "$44,030" and insert "$44,380," so as to read:

Enforcement of the tea importation act: For enabling the Secretary of Agriculture to carry into effect the provisions of the act approved March 2, 1897 (U. S. C., title 21, secs. 41–50), entitled "An act to prevent the importation of impure and unwholesome tea," as amended, including payment of compensation and expenses of the members of the board appointed under section 2 of the act and all other necessary officers and employees, $44,380.

The amendment was agreed to.

The next amendment was, on page 81, at the end of line 12, to strike out "$39,600" and insert "$39,870," so as to read:

For enabling the Secretary of Agriculture to carry into effect the provisions of the naval stores act of March 3, 1923 (U. S. C., title 7, secs. 91–99), $39,870.

The amendment was agreed to.

The next amendment was, on page 81, at the end of line 20, to strike out "$225,458" and insert "$227,035," so as to read:

Enforcement of the insecticide act: For enabling the Secretary of Agriculture to carry into effect the provisions of the act of April 26, 1910 (U. S. C., title 7, secs. 121–134), entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded Paris greens, lead arsenates, other insecticides, and also fungicides, and for regulating traffic therein, and for other purposes," $227,035.

The amendment was agreed to.

The next amendment was, on page 82, line 3, to strike out "$53,030" and insert "$53,632," so as to read:

Enforcement of the milk importation act: For enabling the Secretary of Agriculture to carry into effect the provisions of an act approved February 15, 1927 (U. S. C., Supp. III, title 21, secs. 141–149), entitled "An act to regulate the importation of milk and cream into the United States for the purpose of promoting the dairy industry of the United States and protecting the public health," $53,632.

The amendment was agreed to.

The next amendment was, on page 82, at the end of line 10, to strike out "$26,790" and insert "$27,050," so as to read:

Enforcement of the caustic poison act: For enabling the Secretary of Agriculture to carry into effect the provisions of an act approved March 4, 1927 (U. S. C., Supp. III, title 15, secs. 401–411), entitled "An act to safeguard the distribution and sale of certain dangerous caustic or corrosive acids, alkalies, and other substances in interstate and foreign commerce," $27,050.

The amendment was agreed to.

The next amendment was, on page 82, line 11, to increase the total appropriation for the Food and Drug Administration from $1,810,228 to $1,822,652.

The amendment was agreed to.

The next amendment was, on page 82, line 12, after the word "exceed," to strike out "$618,720" and insert "$623,460," so as to read:

Total, Food and Drug Administration, $1,822,652, of which amount not to exceed $623,460 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, under the subhead "Experiments in livestock production in Southern States," on page 83, at the end of line 20, to strike out "$43,500" and insert "$43,880," so as to read:

To enable the Secretary of Agriculture, in cooperation with the authorities of the States concerned, or with individuals, to make such investigations and demonstrations as may be necessary in connection with the development of livestock production in the cane sugar and cotton districts of the United States, $43,880.

The amendment was agreed to.

The next amendment was, under the subhead "Soil-erosion investigations," on page 87, line 1, after the word "expenses," to strike out "$280,000" and insert "$295,000," so as to read:

To enable the Secretary of Agriculture to make investigation not otherwise provided for of the causes of soil erosion and the possibility of increasing the absorption of rainfall by the soil in the United States, and to devise means to be employed in the preservation of soil, the prevention or control of destructive erosion, and the conservation of rainfall by terracing or other means, independently or in cooperation with other branches of the Government, State agencies, counties, farm organizations, associations of business men, or individuals, including necessary expenses, $295,000, of which amount not to exceed $15,610 may be expended for personal services in the District of Columbia.

Mr. JOHNSON. Mr. President, a parliamentary inquiry, please.

The PRESIDENT pro tempore. The Senator will state it.

Mr. JOHNSON. I have presented an amendment, the phraseology of which was to strike out the $280,000 item and in lieu thereof insert $380,000.

The PRESIDENT pro tempore. On page 87?

Mr. JOHNSON. Line 1; yes, sir.

The PRESIDENT pro tempore. That amendment is in order, it being an amendment to an amendment of the committee.

Mr. JOHNSON. If the committee amendment is permitted to be adopted now, does it foreclose the amendment that subsequently I may offer?

The PRESIDENT pro tempore. Oh, no; it may be offered at any time while the bill is still on the second reading; but this is the proper place to offer it. Otherwise it would be necessary to reconsider the amendment.

Mr. McNARY. I asked unanimous consent first to consider committee amendments.

The PRESIDENT pro tempore. But the Senator from California is offering an amendment to a committee amendment, which is in order.

Mr. McNARY. That is in order; yes.

Mr. JOHNSON. The amendment that I offer has been printed, and I send it to the desk.

The PRESIDENT pro tempore. The amendment will be stated.

The CHIEF CLERK. On page 87, line 1, strike out "$280,000" and insert "$380,000."

Mr. McNARY. Mr. President, I should prefer to finish up the bill in the proper fashion and then return to the Senator's amendment a little later. I ask the Senator, therefore, to yield to me.

Mr. JOHNSON. Why, surely.

The PRESIDENT pro tempore. There is only one more committee amendment.

Mr. McNARY. I desire to finish the committee amendments first.

The PRESIDENT pro tempore. If the Senator from California withdraws his amendment, that may be done. If the Senator from California presses the amendment, it is in order.

Mr. McNARY. He desires to have it withdrawn.

Mr. JOHNSON. I do not desire to interfere with the mode of procedure of the Senator from Oregon, but I did not want to be foreclosed subsequently from the presentation of the amendment.

The PRESIDENT pro tempore. The Chair suggests, then, that this amendment be temporarily passed over.

Mr. JOHNSON. Very well, sir.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 90, line 8, to increase the total appropriation for the Department of Agriculture from $213,055,702 to $213,964,670.

The amendment was agreed to.

The PRESIDENT pro tempore. We will now recur to the amendment on page 87.

The CHIEF CLERK. On page 87, line 1, it is proposed to strike out "$280,000" and insert "$380,000."

Mr. JOHNSON. Mr. President, this amendment, to the Mississippi Valley, to the States of the Colorado Basin, and to the Far-Western States, is of extraordinary importance. It relates to the studies in soil erosion which are deemed absolutely essential in view of the extraordinary works that are now being undertaken by the Government all over the United States.

Mr. HEFLIN. Mr. President, may I ask the Senator how much increase this is over the amount provided by the bill?

Mr. JOHNSON. One hundred thousand dollars; and it would have to be allotted to various parts of the United States ultimately, so that the increase is very slight when the necessity for it is considered all along the line.

I was hoping that the Senator from Oregon could see his way clear to accept the amendment; but if he can not, of course it will have to be presented. May I ask the Senator if he can not see his way clear to accept the amendment?

Mr. McNARY. Mr. President, unquestionably this is a great work. The bill now carries $280,000 for this purpose, an increase of more than $50,000 over current law. I concur in what the Senator said regarding the necessity of this work; but I have proposed to the department that they provide the committee with a program. They want about 16 more stations for this commendable work. As soon as that is done it is my intention, as chairman of the Committee on Agriculture and Forestry, to bring that out as a legislative proposal, which would give us something toward which we could work to complete this great undertaking throughout the country, after which, and I think during this session of Congress, we will have it in position where it may go on some deficiency bill.

I would rather, as I said in the committee, plan an outlined work, because in many sections of the country the work is very important and urgent; and I do not think it would be wise legislation to locate a station here, and one there, without regard to the scientific formulation of a plan. I shall promise the Senator from California, however, to cooperate with him and give him an early hearing before the committee, so that this work can go forward; and I may add finally, Mr. President, that $5,000 has been added to this item by the committee to take care of a station in the Southwestern States which I think probably will reach into California.

I hope that statement will satisfy the Senator.

Mr. JOHNSON. Mr. President, while I am very grateful for the statement and for what the Senator from Oregon has said, I am very sorry indeed that it does not, in my opinion, accomplish the work that those who are interested in this particular amendment desire to see accomplished.

If the necessity exists for the amendment—and I think all of those who are familiar with the matter believe the necessity exists for it—I dislike exceedingly to leave it to the uncertain future and to the determination of a legislative bill in the remaining days of our legislative session. So that if there be a program, and if it be necessary, and if the studies have been made, as I am advised that they have been made, for the allocation and the apportionment of the particular appropriation, this, I think, is the proper time to present it, and the proper bill upon which it should go.

Mr. COPELAND. Mr. President——

The PRESIDING OFFICER (Mr. FESS in the chair). Does the Senator from California yield to the Senator from New York?

Mr. JOHNSON. I yield.

Mr. COPELAND. I have a letter from the Agricultural College of Cornell University. I apologize, I may say to the chairman of the subcommittee—I am a member of the subcommittee—for not having brought up the matter there; but I did not receive this letter until a couple of days ago. This writer very strongly urges, however, that this matter is of equal importance to the upper waters of rivers, both as regards erosion on grazing land and as regards the effect of forest and other vegetative cover on the catchment areas, the watersheds of the feeder streams. So I should like to join the Senator from California in expressing the hope that we may have the added amount included in the bill this year.

Mr. McNARY. Mr. President, if a program could be worked out on the money available, I am willing to have the item go into the bill; but I am not sure that the conferees will hold it without the program. It is possible, of course, that such a program can be worked out. If it can be done so that the money can be equitably and fairly distributed, of course it would hasten the forward progress of this great work.

With that statement, I shall be willing to take the matter to conference.

Mr. JOHNSON. Let me express my thanks to the Senator from Oregon and say to him, too, that he and the other Members here have probably missed some very excellent speeches upon the subject. So I submit the amendment under the statement that has been made by the Senator.

Mr. McNARY. I anticipated that punishment and accepted the amendment. [Laughter.]

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from California to the amendment of the committee.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The PRESIDING OFFICER (Mr. FESS in the chair). The Chair asks to have inserted in the RECORD a letter on the subject that has just been discussed.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CINCINNATI, OHIO, *January 19, 1931.*

Senator SIMEON D. FESS,
Washington, D. C.

DEAR SENATOR FESS: As per our telephone conversation this morning in regard to agricultural appropriation bill H. R. 15256, I have been advised from Washington that Senator HIRAM JOHNSON of California has introduced an amendment to increase the amount on page 87, line 1, by $100,000, so as to speed up the work on soil-erosion investigations.

I am quoting below the resolution passed by the Central States Forestry Congress held in Indianapolis, December 3, 4, and 5, which congress was attended by men from every State covered by the Central States forest experiment station, located at Columbus:

"Whereas soil erosion in the Central States is continuing at an accelerated rate to ruin farms and thus to increase the already enormous area of abandoned land; and

"Whereas excessive run-off and attendant erosion from these abandoned lands and from other areas unsuited to agriculture increase the flood height and the severity of flood damage and thereby contribute to the flood-control problem of the Mississippi River and its tributaries; and

"Whereas the erosion and run-off from these submarginal lands remain unchecked because of lack of knowledge of control methods; and

"Whereas the problem of controlling erosion and excessive run-off from nonagricultural lands is a forestry problem and should be studied and investigated; and

"Whereas the present forest-research program under way in the Central States region is so heavy that it does not permit new work without curtailing present activities, all of which are important; be it

"*Resolved*, That the Central States Forestry Congress call to the attention of Members of the National Congress and to heads of Federal departments the need for erosion-control research and request that adequate funds be provided for studying this problem and developing control methods through forestry practices."

I telephoned Mr. E. F. McCarthy, director of the station at Columbus, to ask him what amount would be needed to carry out the work outlined in the resolution quoted above. He feels that he should have a minimum of $20,000 for this study, which is extremely vital considering the denuded lands in the Central States which are becoming more and more eroded, washing into the Ohio River and on down into the Mississippi. One only needs to recall the deep gullies which have been washed in the farm lands between Cincinnati and Xenia to get a picture of what is going on all over the Central States. If we are ever going to stop erosion and help control the flood situation, we will need to make a thorough study and distribute the findings to the landowners in this territory. At present the Central States forest station is unable to do anything because of lack of funds.

As I told you over the phone, I am trying to interest a large consumer of wood in a campaign to reach every farmer within a radius of 100 miles of Cincinnati in a concerted effort to get them to grow certain types of trees which this concern could use for an indefinite number of years. This would very materially aid in stopping erosion and also bring to the farmer on the poor lands an income which he does not now enjoy.

I asked the Central States forest station to make a study of the timber standing in this radius, but they were unable to do so because of lack of funds, although it is one of the things the station was supposed to undertake for all the territory covered by it. Until we know the amount of good timber standing in this section which would be available for the industries of the Central States, we are not going to be able to be of much help to these users of wood who at present are paying about $100,000,000 a year in freight rates for wood which we should be growing in this territory.

If at all possible I would like you to add an amendment to this appropriation bill for $20,000, to be used in a study of available timber in the Central States. This, together with the $20,000 of the $100,000 asked for by Senator JOHNSON, of California, would give the station some funds with which to do a constructive piece of work. Mr. McCarthy has been doing excellent research on the limited appropriation which has been made each year, but if we hope to stimulate the proper kind of interest in this territory and do a real piece of work, we need larger appropriations for these important studies and for increases in salary in order to hold men who are being continually offered larger remunerations by the industries.

The Central States Forestry Congress will have its second annual meeting in Cincinnati next fall, and Alexander Thomson, vice president of the Champion Coated Paper Co., will probably be elected president. We will set up an interesting program and invite all users of wood and those interested in the growing of wood in this section.

Hoping that you will be able to do something for the good of this cause, I remain,

Sincerely yours,

C. VIVIAN ANDERSON.

P. S.—In regard to a survey for available timber, I might say that in the original McSweeney-McNary bill a fund was set aside for this purpose, but none of it has ever been allotted to the Central States station, most of it being used in the Western States and in the southern pine belt.—C. V. A.

Mr. TRAMMELL. Mr. President, I desire to call the attention of the chairman of the committee to page 18, line 25, where a committee amendment providing a total of $66,300 was adopted. What I desire to do is to have that action reconsidered for the purpose of offering an amendment to strike out "$66,300" and insert in lieu thereof "$76,300."

The PRESIDING OFFICER. Is there objection to a reconsideration of the amendment? The Chair hears none. The Senator from Florida can offer his amendment.

Mr. TRAMMELL. Now, I propose an amendment to strike out "$66,300" in line 25, page 18, and insert in lieu thereof "$76,300."

Mr. President, this item calls for an appropriation for investigations, observations and reports, forecasts, warnings, and advices for the protection of horticultural interests. It is my understanding that in the allocation of this total sum, as the bill passed the House and also according to the recommendation of the committee of the Senate, no allowance is made for this purpose for the citrus-fruit industry of northern and western Florida and also for southern Georgia; but the bill does carry, in the allocation of the total as it passed the House and was reported from the Senate committee, an item of $10,000 for Texas, and $8,000 for south Alabama, more particularly for the Satsuma orange industry. The greater Satsuma orange industry is in northern and western Florida and southern Georgia; and what I desire is to have $10,000 for those two sections.

Mr. McNARY. Mr. President, is this for Weather Bureau stations, frost warnings?

Mr. TRAMMELL. Yes; it is in connection with the investigations of weather conditions, and so forth. It seems

that these two sections—northern and western Florida, and also south Georgia—are not included in the allocation that was considered both by the House and by the Senate committees.

Mr. McNARY. Does the Senator want a frost-warning station? What does he want?

Mr. TRAMMELL. The object is to provide for information, investigations, and so forth, with regard to the Satsuma orange industry.

Mr. McNARY. This item appertains to forecasting weather conditions affecting citrus crops.

Mr. TRAMMELL. It is possible that I have the wrong page.

Mr. McNARY. I am sure the Senator has.

Mr. TRAMMELL. Where is the item that applies to standardization of the Satsuma orange industry, investigations, and so forth?

Mr. McNARY. On page 36, line 22, the Senate committee allowed $5,000 for experiments concerning citrus-fruit coloring, which covers the Satsuma orange and grapefruit situation in Florida—I think that is what the Senator has in mind.

Mr. TRAMMELL. No; that is not the idea. I have been informed by some parties interested, and also by one member of the committee who was appealed to in connection with it, that what was needed was an appropriation of $10,000 for northern and western Florida and southern Georgia, the same as is being allowed under the allocation to Texas and to Alabama.

Mr. McNARY. Does the Senator know for what purpose it is being used? Is it to combat insects, cure diseases, affect the culture of fruit, or what?

Mr. TRAMMELL. It is, in addition to that, for the standardization of the industry.

Mr. FLETCHER. Mr. President, if my colleague will allow me to interrupt, the purpose is to provide for research work, the standardization of the quality of the Satsuma orange, and a study of protection of the same. I think it comes under the item to which my colleague refers. He proposes to increase that amount $10,000.

Mr. McNARY. The item now pending has altogether to do with weather forecasts.

Mr. FLETCHER. That is included in this.

Mr. McNARY. The department has several frost stations and meteorological stations, where weather warnings are given. Does the Senator want a station in Florida?

Mr. FLETCHER. If that is necessary.

Mr. McNARY. I do not know whether it is necessary or not.

Mr. FLETCHER. It is intended for the protection and benefit of the Satsuma orange industry. The Satsuma orange industry is largely developed in west Florida. The Satsuma orange will stand a lower degree of temperature than the ordinary orange, but the groves have been very greatly damaged by frost there, and this research goes along with the protection work in the groves. It seems to be of importance to that industry.

Mr. McNARY. On page 36 of the bill there is a general item calling for $1,400,000, and included in that is an allocation to study the cultural methods incident to the growth of the Satsuma orange. I think that is what the Senator wants. It is a horticultural matter, not a weather matter. If the Senator will find the item and explain it, it is possible we may get together, but I am at a loss to know just what he has in mind.

Mr. TRAMMELL. Mr. President, the item to which the Senator refers is probably the one in which I am interested. I was talking to a member of the Committee on Agriculture and Forestry, and also a member of the subcommittee of the Committee on Appropriations, interested in this matter. I think it is probable that the chairman of the Committee on Agriculture and Forestry is correct in suggesting that the amendment should go in the item to which he has called attention. My understanding is that $10,000 has been allocated to Texas for this purpose and $8,000 to Alabama.

Mr. McNARY. For what purpose?

Mr. TRAMMELL. For the standardization and study of the Satsuma orange industry. That is really what it is, as I understand it.

Mr. McNARY. That is found on page 36. Five thousand dollars is allowed for that particular purpose, but it has nothing to do with the Weather Bureau or with forecasting. The senior Senator from Florida came before the committee, and the item was increased $5,000. That is the appropriation about which the Senator speaks, in my judgment.

Mr. TRAMMELL. That was in connection with the question more particularly of the process of coloring.

Mr. FLETCHER. Yes; that had to do with a different thing altogether. It had to do with the process of coloring the fruit and investigation and study of that process. That item comes there. But this has to do with standardization.

Mr. McNARY. Let me suggest to the Senators from Florida to confer on the matter and locate the item in the bill, and let me know what it is about, and we may get together.

Mr. TRAMMELL. I have just read a paragraph on page 36, beginning with line 14 and going down to line 22, and I desire to offer an amendment on line 22.

The PRESIDENT pro tempore. The Senator would first have to ask for a reconsideration of the vote by which that amendment was agreed to.

Mr. TRAMMELL. I ask that the vote by which the amendment on page 36, line 22, was agreed to, be reconsidered.

The PRESIDENT pro tempore. Is there objection? The chair hears none, and the vote is reconsidered.

Mr. TRAMMELL. I propose an amendment to strike out "$1,435,360," and to insert in lieu thereof "$1,445,360."

Mr. HEFLIN. That gives $10,000 for the work in Florida?

Mr. TRAMMELL. That is the purpose of it.

The PRESIDENT pro tempore. The question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The PRESIDENT pro tempore. The reconsideration ordered on page 18, line 25, will be canceled.

Mr. WHEELER. Mr. President, I desire to submit an amendment on page 43, line 4, to strike out "$120,000" and insert in lieu thereof "$130,000, of which not to exceed $10,000 may be expended for grange utilization research in cooperation with the United States Range Livestock Experiment Station at Miles City, Mont."

Mr. McNARY. Mr. President, the department, in the estimates of the Director of the Budget, took care of that proposition, and I have no objection to the amendment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. SMOOT. Mr. President, I want to call the attention of the Senator to an item relating to the western yellow blight. I have received a letter from Utah in which it is stated:

> During the past season the western yellow blight or curly top has resulted in an almost complete loss of the Utah tomato crop. Of the 10,000 acres in the State, less than a 35 per cent crop has been harvested and some districts' crop destruction has been almost complete. This represents an aggregate direct loss for the year of $1,500,000 for this disease alone.

Mr. President, I desire to ask the Senator from Oregon to accept an amendment to increase by $20,000 the appropriation found on page 36 from $1,445,360, to which it has been increased by the amendment offered by the Senator from Florida.

Mr. COPELAND. Mr. President, is that the same item under which the control of the elm disease would be included?

Mr. McNARY. No; that is a different item. Ten thousand dollars is carried in the bill for the purpose suggested by the Senator from Utah. The chairman of the committee has recently been informed that the blight to which he refers is a very virulent disease operating in the tomato-growing sections of the country. I have no objection to the amendment.

Mr. SMOOT. I ask that the vote by which the amendment, on page 36, line 32, was agreed to be reconsidered.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and the vote is reconsidered, and the question is on agreeing to the amendment to the amendment suggested by the Senator from Utah.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. COPELAND. Mr. President, was the Senator from Ohio entirely satisfied with the arrangement regarding the elm disease?

Mr. McNARY. The Dutch elm disease has recently been located in northeastern Ohio. The Director of the Budget's estimate, $1,688, was reduced by the House and restored by the Senate. The junior Senator from Ohio [Mr. BULKLEY] spoke to me about further increasing that amount. I suggested to him to take the matter up with the Director of the Budget, and he has arranged for a meeting on Wednesday of next week. I told him that if he were successful in getting the Budget estimate increased—and I think it should be—I would cooperate gladly in getting the item into the deficiency bill, and he seemed to be very well satisfied with that arrangement.

Mr. COPELAND. Mr. President, the Senator thinks that is the wise way to deal with it?

Mr. McNARY. I think so. I think the Senator is perfectly satisfied, and I think the same result could be obtained and that it is a better plan to pursue.

Mr. COPELAND. Mr. President, I have one other matter I desire to suggest. I have been appealed to to have the amount of money appropriated for acquiring additional forest lands increased. What is the attitude of the chairman of the committee in that matter?

Mr. McNARY. Mr. President, in a bill that bears my name in part an authorization is made for that matter of $3,000,000 a year. This bill carries an appropriation of $2,000,000. It is hoped that within the next four or five years the $3,000,000, the maximum authorized by law, will be reached. No suggestion has been made to the committee that the total amount authorized be appropriated now. The junior Senator from New Hampshire [Mr. KEYES] is a member of the commission, and probably he can answer the question as to whether they care to have more money appropriated.

Mr. COPELAND. Mr. President, the appeal made to me, I may say to the Senator from New Hampshire, is that we ought to go forward with the full amount authorized in the McNary-McSweeny bill. Two million dollars was appropriated this year, instead of the $3,000,000 which could be appropriated under authorization which now exists.

The argument made is that even in a State like mine it is an important thing to get rid of the submarginal lands and take them out of agricultural use in order that there may be some relief of the surplus of agricultural products. So it has been suggested that we increase that amount to the full figure of the authorization. What is the attitude of the Senator from New Hampshire in regard to that?

Mr. KEYES. Mr. President, the attitude of the Senator from New Hampshire is that he would be only too glad to see an increase from two million to three million. The amount of three million has been recommended by the Forest Commission for several years and by the Department of Agriculture. Unfortunately, the Budget has not seen fit to approve that amount for this year, and under the circumstances I hesitate about making any attempt to increase the amount from two million to three million, although I would be only too glad to see it done and would be glad to support any effort on the part of the Senator from New York to bring that about.

Mr. COPELAND. Let me ask the chairman of the committee a question. Does he see any objection to increasing that amount now, if we are proposing to do it in the future? I take it that the chairman knows more about it than any of the rest of us, because it was his bill originally that provided for the authorization.

Mr. McNARY. Mr. President, I think we should leave some things to be done in the future. It is not possible to acquire this cut-over land in large quantities in a brief time. It is a long-time program the Government is entering into. I do not think there would be a chance in the world to hold such an amendment in conference. I think it would be idle to attempt to do so. The policy of the Forestry Department is settled upon that matter. As soon as they can acquire lands in suitable areas at a satisfactory price they will come to Congress and ask additional money. But they have not the plans made up this year, or options on lands in buying which they could employ the money.

Mr. COPELAND. Do I understand that appropriations have been made which have not been used for this purpose?

Mr. McNARY. There have been times when these appropriations were made. I may say to the Senator that a few years ago the item was $250,000. It grew to $500,000, then to a million, and now it is two million. There are times when large sums of money are held by the Department of Agriculture awaiting a proper purchase of suitable land. There is no demand for it now. The department would not use it now. They have not the land in sight, and I think the Senator's good judgment should prevail and that he should wait until another year rolls by.

Mr. COPELAND. I thank the Senator.

Mr. KENDRICK. Mr. President, I desire to offer the amendment which I send to the desk.

The PRESIDENT pro tempore. The amendment will be stated.

The CHIEF CLERK. On page 70, line 19, the Senator from Wyoming moves to strike out the numerals " $1,478,020 " and insert in lieu thereof " $1,498,020," so as to read:

Market news service: For collecting, publishing, and distributing, by telegraph, mail or otherwise, timely information on the market supply and demand, commercial movement, location, disposition, quality, condition, and market prices of livestock, meats, fish, and animal products, dairy and poultry products, fruits and vegetables, peanuts and their products, grain, hay, feeds, tobacco, and seeds, and other agricultural products, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, and persons engaged in the production, transportation, marketing, and distribution of farm and food products, $1,498,020.

The PRESIDENT pro tempore. Reconsideration of the vote by which the committee amendment at that point was agreed to must first be had.

Mr. KENDRICK. Mr. President, I think the chairman of the committee will recall that I was authorized by the committee to offer the amendment.

Mr. McNARY. That is true.

Mr. HEFLIN. Mr. President, may I ask the Senator from Wyoming how much of an increase is proposed?

Mr. KENDRICK. It is an increase of $20,000. The purpose of the increase is to establish a market news agency at Casper, Wyo.

In spite of Wyoming's enormous contribution to the Nation's food supply in the way of livestock and livestock products, it has not at this time a single market news agency. This move is intended to furnish information to both producers and purchasers of livestock and in that way to facilitate trading in connection with the same.

Mr. WHEELER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Wyoming yield to the Senator from Montana?

Mr. KENDRICK. Certainly.

Mr. WHEELER. This, as I understand it, is a proposal to extend the service from Denver up to Casper?

Mr. KENDRICK. It is.

Mr. WHEELER. That is likewise in a direct line with Billings, Mont. I am not going to ask for an amendment at this time extending the service up to Billings, Mont. Montana has not any such service, although it is entitled to it. I want to serve notice that when the next Agricultural Department appropriation bill comes up I shall ask that the service be extended to Billings, Mont., for the benefit of that great stock-growing State and that section of the country.

Mr. McNARY. Mr. President, may I correct one statement? This is an extension from Boise, Idaho, rather than from Denver. I concur in the view of the Senator from Montana that his State is entitled to this service.

Mr. KENDRICK. The Senator will remember that that was the opinion we had in the committee?

Mr. McNARY. Yes.

Mr. KENDRICK. But this extension is planned from Denver north to Wyoming and the service will no doubt ultimately be extended to Montana.

Mr. President, Casper is located in the center of the largest producing area of mutton, wool, and cattle in all the Rocky Mountain region. It has splendid packing-house and stockyard facilities. It is the trade center for an enormous territory, the livestock producers and shippers of which must now depend upon market reports mailed from Denver, Omaha, and St. Paul, and these reports do not always reach them in time to be of any service. As already stated, the market news agency would prove of invaluable benefit to them.

The PRESIDENT pro tempore. Without objection, the vote whereby the committee amendment was agreed to is reconsidered. Without objection, the amendment proposed by the Senator from Wyoming to the amendment of the committee is agreed to; and, without objection, the committee amendment as amended is agreed to.

Mr. SMITH. Mr. President, I offer the following amendment to the bill.

The PRESIDENT pro tempore. The amendment will be stated.

The CHIEF CLERK. Insert at the proper place in the bill the following:

That the act of Congress entitled "Joint resolution for the relief of farmers in the storm and/or drought stricken areas of Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia, Ohio, Oklahoma, Indiana, Illinois, Minnesota, North Dakota, Montana, New Mexico, and Missouri," approved March 3, 1930, and fully set out in United States Statutes at Large, Seventy-first Congress, second session, volume 46, chapter 68, be, and the same is hereby, reenacted and made applicable to the crop year of 1931, with this limitation: That only the funds collected from the loans of 1930 in the States of North Carolina, South Carolina, Georgia, and Florida, made under said act be available for the crop year of 1931; that said funds so collected be, and they are hereby, authorized to be appropriated and made available for the purpose of carrying out this resolution for the crop year of 1931, in the States of North Carolina, South Carolina, Georgia, and Florida.

Mr. SMITH. A joint resolution providing for this relief has been approved by a standing committee of the Senate and has passed the Senate.

Mr. BLACK. Mr. President, will the Senator from South Carolina yield?

Mr. SMITH. Certainly.

Mr. BLACK. I have offered a similar resolution asking that the name of the State of Alabama be added. That resolution has been referred to the Committee on Agriculture and Forestry. I have taken up the matter personally with the Department of Agriculture. No report has yet come in and the committee has not met since I offered the resolution. I will state to the Senator from South Carolina that unless the intention of the department has been changed the counties in Alabama which have suffered from the storm may not and probably will not be included in the drought loan. I feel sure that if this amendment meets the approval of the department my resolution will likewise meet the approval of the department. I would like to propose an amendment to the amendment of the Senator from South Carolina providing that the name of the State of Alabama be added to the other States mentioned in his amendment.

Mr. SMITH. Mr. President, this is a matter which is very urgent. I do not know that there will be any objection to adding the name of the State of Alabama to the amendment. The Senator from Georgia [Mr. HARRIS] is here and the Senator from North Carolina [Mr. MORRISON] is here. The joint resolution was approved unanimously in the committee and passed unanimously by the Senate. If the Senator from Alabama sees fit to offer his amendment to include Alabama, I have no objection; but I do hope that the matter will be expedited as much as possible.

Mr. BLACK. May I say to the Senator that I do not want to and would not under any circumstances do anything that would prevent the prompt adoption of the Senator's amendment. If it would prevent that, I should simply offer my proposal as a separate amendment so it will not complicate the Senator's amendment.

Mr. HEFLIN and Mr. McNARY addressed the Chair.

The PRESIDENT pro tempore. Does the Senator from South Carolina yield; and if so, to whom?

Mr. SMITH. I yield first to the Senator from Alabama.

Mr. HEFLIN. My colleague suggests that counties in the State of Alabama which have been seriously hurt by storm and flood might not be considered as counties entitled to relief under the drought appropriation bill. It has been stated that they will be taken care of under the drought appropriation; that the Agriculture Department could attend to it from that fund, and that it would not be necessary to get any of the fund the Senator is seeking here. But if they should not get relief from that source, then it would be provided for under the Senator's amendment.

Mr. SMITH. I am leaving it to the judgment of the Senator from Alabama [Mr. BLACK] as to whether he will attempt to amend my amendment by adding the name of his State. I was informed by the department that the States named will not come under the provisions of the $45,000,000 appropriation. It was suggested to me by the head of one of the bureaus of the department that I take the course which I have suggested, and which received the unanimous indorsement of the committee and the Senate the other day, as I have already stated. I had hoped to put the amendment on the Agricultural Department appropriation bill so when it goes to conference the House can take immediate action on it, because their rules are such as to very often delay such matters beyond the time when help can be gotten. If the Senator from Alabama wishes it, I have no objection to having the name of the State of Alabama included, but I do not want to jeopardize my amendment at this stage of the situation, when help is so vitally needed.

Mr. McNARY. Mr. President, the Senator from South Carolina has offered an amendment making available the money appropriated a year ago for flood-stricken regions. Eighty per cent of that money has been paid into the Treasury of the United States. That money which has been covered into the Treasury they desire to make a revolving fund again to be loaned to farmers to buy feed, seed, and fertilizer. It has nothing whatever to do with the $45,000,000 appropriation.

The Department of Agriculture has ruled that the $45,000,000 can not be used in this drought-stricken part of the country which suffered in 1929, but that its use is limited to those areas affected by the drought of 1930. A subcommittee of the Committee on Agriculture and Forestry on yesterday approved of the Senator's proposal. It is in order. I shall accept it so far as I am concerned. There is no reason why the amendment of the Senator from Alabama should not be agreed to here because, after all, it is an administrative matter. I hope the Senate will understand it. So far as I am concerned, I am ready for a vote.

Mr. SMITH. I am perfectly willing that the amendment of the Senator from Alabama shall be offered.

Mr. HARRIS. Mr. President, I am glad to know that the Senator from Oregon [Mr. McNARY] approves of this amendment, because the other day apparently he did not understand the situation. I proposed an amendment along the same line which he opposed, but inasmuch as he at that time did not understand the situation, my amendment was not approved. Unless such an amendment making an appropriation as that offered by the Senator from South Carolina is agreed to, thousands of farmers in my State will not be able to cultivate their crops for the present year.

Mr. BLACK. I offer my amendment to the amendment of the Senator from South Carolina.

The PRESIDENT pro tempore. The amendment will be stated.

The CHIEF CLERK. On page 2 of the amendment offered by the Senator from South Carolina, in line 3, after the words "States of," insert the word "Alabama," and in line 8, after the words "States of," insert the word "Alabama."

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Alabama to the amendment of the Senator from South Carolina.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. McNARY. Mr. President, I ask unanimous consent that the clerks be authorized to correct all totals where necessary.

The PRESIDENT pro tempore. Without objection, it is so ordered. The bill is still open to amendment. There being no further amendments, the question is, Shall the amendments be engrossed and the bill read a third time?

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDENT pro tempore. The question is, Shall the bill pass?

The bill was passed.

ORDER OF BUSINESS

Mr. HOWELL. Mr. President, I move that the Senate now proceed to the consideration of the bill (S. 3344) supplementing the national prohibition act for the District of Columbia.

The PRESIDENT pro tempore. The Chair is of the opinion that there was an agreement with the Senator from Montana [Mr. WALSH] with reference to the motions which he had pending. While such an arrangement was not formally entered into, yet the Chair feels bound to make that statement.

Mr. WALSH of Montana. Mr. President, I was about to move that the Senate proceed to the consideration of executive business; but I agreed with the Senator from Nebraska [Mr. HOWELL] that if his matter did not lead to debate I should not press my motion until he had an opportunity to offer his motion.

The PRESIDENT pro tempore. The Chair will state to the Senator from Montana that agreeing to the motion of the Senator from Nebraska will not preclude the motion which the Senator from Montana wishes to make. The Chair assumes that the desire of the Senator from Nebraska is to have his bill made the unfinished business?

Mr. HOWELL. That is my desire.

Mr. LA FOLLETTE. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Fess	King	Shortridge
Barkley	Fletcher	La Follette	Smith
Bingham	Frazier	McGill	Smoot
Black	George	McKellar	Steck
Blaine	Gillett	McMaster	Steiwer
Blease	Glass	McNary	Stephens
Borah	Goff	Metcalf	Swanson
Bratton	Goldsborough	Morrison	Thomas, Idaho
Brock	Gould	Morrow	Thomas, Okla.
Brookhart	Hale	Moses	Townsend
Broussard	Harris	Norbeck	Trammell
Bulkley	Harrison	Norris	Tydings
Capper	Hastings	Nye	Vandenberg
Caraway	Hatfield	Oddie	Wagner
Carey	Hawes	Partridge	Walcott
Connally	Hayden	Patterson	Walsh, Mass.
Copeland	Heflin	Phipps	Walsh, Mont.
Couzens	Howell	Pine	Waterman
Cutting	Johnson	Pittman	Watson
Dale	Jones	Reed	Wheeler
Davis	Kean	Robinson, Ark.	Williamson
Deneen	Kendrick	Schall	
Dill	Keyes	Sheppard	

The PRESIDENT pro tempore. Ninety Senators having answered to their names, a quorum is present.

EXECUTIVE SESSION

Mr. WALSH of Montana. Mr. President, I am advised that the motion of the Senator from Nebraska [Mr. HOWELL] will lead to protracted debate, and accordingly I must insist upon my motion that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

The PRESIDENT pro tempore. There are no messages from the President to be laid before the Senate. Reports of committees are in order.

REPORTS OF NOMINATIONS

Mr. PHIPPS, from the Committee on Post Offices and Post Roads, reported favorably sundry post-office nominations, which were placed on the Executive Calendar.

Mr. REED, from the Committee on Military Affairs, reported favorably the nominations of sundry officers in the Regular Army and in the Officers' Reserve Corps of the Army, which were placed on the Executive Calendar.

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of sundry postmasters in the State of Tennessee, which were placed on the Executive Calendar.

FEDERAL POWER COMMISSION

The PRESIDENT pro tempore. The calendar is in order. The clerk will state the next business in order on the calendar.

The Chief Clerk read as follows:

FEDERAL POWER COMMISSION

George Otis Smith, of Maine.
Marcel Garsaud, of Louisiana.
Claude L. Draper, of Wyoming.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Montana that the nominations just read be recommitted to the Committee on Interstate Commerce.

Mr. WALSH of Montana. Mr. President, on yesterday attention was called to a small item of $30,000,000 or so which the Niagara Falls Power Co. had incorporated in its statement of prelicense costs making up its net investment for water rights which it claimed to have in the Niagara River. It would appear that the invalidity of that item of expense has already been adjudicated by the Supreme Court of the United States. The same question arose in connection with the Government taking over the works in the Sault Ste. Marie and acquiring the adjacent riparian lands for the purpose of constructing works of navigation and power development now operated by the Government in those waters. Condemnation proceedings were authorized, and the riparian owners set up a claim to large amounts on account of the water rights which they claimed to have in the stream. The Supreme Court of the United States denied the right thus asserted, and in the syllabus of the case made the following statement:

An owner of upland bordering on a navigable river which is taken under condemnation by the Government for the purpose of improving navigation is entitled to compensation for the fair value of the property, but not to any additional values based upon private interest in the potential water power of the river.

I read from the case of United States *v.* Chandler-Dunbar Co. (229 U. S. 53) the paragraph from the syllabus appearing on page 55. From the body of the opinion I read as follows:

It is a little difficult to understand the basis for the claim that in appropriating the upland bordering upon this stretch of water the Government not only takes the land but also the great water power which potentially exists in the river. The broad claim that the water power of the stream is appurtenant to the bank owned by it, and not dependent upon ownership of the soil over which the river flows has been advanced. But whether this private right to the use of the flow of the water and flow of the stream be based upon the qualified title which the company had to the bed of the river over which it flows or the ownership of the land bordering upon the river is of no prime importance. In neither event can there be said to arise any ownership in the river. Ownership of a private stream wholly upon the lands of an individual is conceivable; but that the running water in a great navigable stream is capable of private ownership is inconceivable.

I continue, Mr. President, reading from the testimony at page 48.

The chairman, the Senator from Michigan [Mr. COUZENS], said:

I remember Mr. Russell saying something on yesterday about $700,000. What case was that?

Mr. KING. That $700,000 was in a somewhat different category. I think what Mr. Russell referred to were some payments, or rather some charges, by the Clarion River Power Co., to the plant-invest-

ment account of a project up in Pennsylvania on the Clarion River. The Clarion River Power Co., at the time the license for that project was issued, several years ago, and during the time of the construction of the project, was controlled by a firm of bankers in New York City known as H. D. Walbridge & Co. That firm of bankers controlled in Pennsylvania a public-utility corporation which was operating. It controlled also a real-estate company in Pennsylvania. It controlled also a construction company. The bankers prevailed upon that public utility in Pennsylvania to guarantee the bonds of this Clarion River Power Co.

The CHAIRMAN. I did not get that. Who did they prevail upon?

Mr. KING. A public-utility company in Pennsylvania which was operating and which had financial standing.

The CHAIRMAN. To guarantee whose bonds?

Mr. KING. The bonds of the Clarion River Power Co.

The CHAIRMAN. I see.

Mr. KING. They persuaded their construction company to enter into a construction contract with the Clarion River Power Co. to supervise the construction of the project. And they caused the real-estate company to transfer to the Clarion River Power Co., the licensee, the lands necessary for the purposes of the project. Here are some items that the bankers proposed to charge to the investment in that project:

"Services securing contract with General Construction Corporation for construction of plant, $200,000."

The Walbridge Co. controlled that General Construction Corporation. And these are all charges made by these bankers:

"Services securing contract with Penn Public Service Corporation to purchase output of plant, $200,000."

That Penn Public Service Corporation was controlled by the Walbridge people. This local company further agreed to take the output of this project upon the representations of the Walbridge Co., and for that service H. D. Walbridge & Co. charged $300,000.

The CHAIRMAN. In other words, that $300,000 was simply for getting them to sign the contract to take the output?

Mr. KING. Yes, sir.

Senator HASTINGS. And was a corporation which they controlled.

Mr. KING. Yes, sir.

Senator GLENN. Then as a matter of fact they persuaded themselves to do it.

Mr. KING. Yes, sir.

"To guarantee payment of principal and interest of Clarion River Power Co.'s bonds, $200,000."

That makes $700,000. But that is not all:

"Expense in connection with issuance of securities by Clarion River Power Co. and familiarizing local investors with the market for the Clarion River Development, $294,102.80."

And then there is this further:

"Total charges by H. D. Walbridge & Co. for services and expenses, $2,214,000."

Senator HASTINGS. Wait a minute. Is that a summary of all the items, or is that in addition? Is that sum of $2,214,000 in addition to the other items you gave us?

Mr. KING. There is one item that I did not read. They made a charge for engineering services and exploration work, including drilling to disclose foundation conditions, $1,119,897.20.

Senator HASTINGS. And your total is $2,214,000.

Mr. KING. The total is $2,214,000; yes, sir.

The CHAIRMAN. Just at that point: There is more or less legitimacy in the last charge provided the amount is correct. What method have you of analyzing the correctness of the amount for drilling and other engineering services?

Mr. KING. That could only be done by a very careful examination of the account. In this particular case H. D. Walbridge & Co. denied access to their books and records, so that we have never determined all the facts.

Senator HASTINGS. They would not permit you to have access to their books and records?

Mr. KING. They would not. May I read a little further here?

The CHAIRMAN. Yes.

Mr. KING. There was a charge on account of the General Construction Co., which was owned by H. D. Walbridge & Co.

Senator WHEELER. Speak a little louder, please.

Mr. KING. I say there was a charge made to this project and paid to the General Construction Corporation for expenditures and services, including salaries of general officials, expense of New York office, and contractor's overhead and profit, in addition to promotion and financing services for general engineering and supervision, $2,550,000.

Senator WHEELER. Is that in addition to the other figure of $2,214,000?

Mr. KING. Oh, yes; that is in addition. Then there is "Unidentified items" apparently to balance that other amount, $44,736.81. Total charges by General Construction Corporation for alleged services and expenses, $2,594,736.81.

The CHAIRMAN. So when they could not find enough items to which to allocate the amount they decided to charge they added $44,000 to make it come out even; is that right?

Mr. KING. Perhaps so.

Senator HASTINGS. You do not mean to say that this has been approved by the Federal Power Commission or your office, has it?

Mr. KING. Oh, no, indeed. It has not yet been presented to the commission.

Senator GLENN. How large a project was it?

Mr. KING. The amount claimed as the cost of that project is $11,032,816.57. The accountants could only identify about one-half of that amount as being actually expended on the project.

The CHAIRMAN. I should like to ask in that connection: What have you to suggest, if necessary, in order to get access to those books, as you say you could not get them. What can the Congress do, or what can be done in any way, to get at those books?

Mr. KING. I do not know that it is necessary for the Congress to do anything. I think the Federal Power Commission has authority under the act to enter upon mandamus proceedings and obtain possession of the books. Mr. Russell can give you a better opinion on that, however, than I can.

It is perfectly obvious, Mr. President, that some of these corporations getting licenses from the Power Commission have abundant reasons for not desiring a good, aggressive solicitor of the commission to be applying for writs of mandamus to compel them to produce their books to justify accounts such as those to which I am calling the attention of the Senate. I continue reading from the testimony:

The CHAIRMAN. Mr. Russell might put in at this point what he has to say about that.

Mr. RUSSELL. As to whether or not the present act would give us authority to proceed; is that the question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. RUSSELL. We have ample authority under the act, which was closely drawn according to the wording of the interstate commerce act, which act the courts have held gave the Interstate Commerce Commission the right to examine books. The trouble with the Senator's question about going ahead and putting into the record what we can find is this, and we have had that under discussion: Under our present act we have to make a finding as to what the net investment is, and we would hardly be justified in arbitrarily saying we could not find anything more without going further and getting the books and determining as closely as we can what would be the proper result.

The CHAIRMAN. That would be true if you had authority to go into their books.

Mr. RUSSELL. We have authority if the commission will let us proceed.

The CHAIRMAN. Why has that authority not been given?

Mr KING. I tried to explain it on yesterday, that Mr. Bonner told me we were not to interfere with any of these things, nor for me to do anything about it.

I read from page 51:

The CHAIRMAN. Have you had any difficulty in getting access to the books of the management companies or holding companies to ascertain the merits of these claims?

Mr. KING. We have been refused access to certain records of Electric Bond & Share.

The CHAIRMAN. Any other company?

Mr. KING. The Niagara Falls Power Co. denied us access to the records of its predecessor company. The present Niagara Falls Power Co., a corporation created in 1918 by consolidation and merger of three other corporations, has denied us access to the records of those constituent corporations.

Senator WHEELER. There was some testimony here on yesterday with reference to Byllesby—is that the name of the company—of a $140,000 claim of theirs.

The CHAIRMAN. That was the Byllesby Co.

Mr. KING. Back in 1924 or 1925, I think it was, an audit was made of the accounts of the El Dorado Power Co. out in California, in the charges to the project, which is No. 184, in California. We found an item for attorneys' fees in Washington, D. C., amounting to $26,479.44. Investigation of that item disclosed that it was a payment to Mr. D. T. Flynn or to Cummins, Roemer & Flynn, attorneys for the Byllesby interests. Recently in auditing the accounts of certain projects in Wisconsin and Minnesota, namely, Nos. 250, 285, and 310, on the Mississippi and St. Croix Rivers, we found charges aggregating $137,560.08 representing similar payments to Cummins, Roemer & Flynn or D. T. Flynn, or to other individuals through the firm of Cummins, Roemer & Flynn. Those payments represented the salary and expenses of Mr. D. T. Flynn or Cummins, Roemer & Flynn, or others during the period from January 5, 1917, to March 24, 1925. And it appears that during that period Mr. Flynn was paid about $1,950 per month. I have here the details of these charges submitted by the Byllesby Engineering & Management Corporation in a letter to the Federal Power Commission dated January 9, 1928. The investigation by the auditor of the commission showed that the charges made to these projects in Wisconsin and Minnesota were larger by several thousands of dollars than as shown by the statements submitted by the Byllesby organization.

Senator WHEELER. This $139,000 which you spoke of that was paid to them, was that for legal fees to lawyers in connection with this work or not? I do not think I quite understand that. Didn't you speak about $139,000 there that was paid to Flynn?

Mr. KING. Perhaps I better read what the Byllesby Engineering & Management Corporation say the services were for: "Legal expenses at Washington, D. C., $26,479.44."

Senator WHEELER. Now, let me ask you there: Would that be a legitimate expense to go into capital costs or not?

Mr. KING. It would not, in my opinion. That is why I am discussing these items now. These are items which we have found charged into capital accounts of the power companies and which we as accountants question as being improper.

On the same subject, I read from page 53:

Senator WHEELER. All right. Go ahead, Mr. King.

Mr. KING. I was reading the explanation given by the Byllesby Engineering & Management Corporation:

"This item, as inferred by you, represents legal fees and expenses of Cummins, Roemer & Flynn, covering the period June, 1917, to March, 1921, mainly for services in connection with attendance at hearings and conferences relating to the proposed national water-power legislation, which culminated in the passage of the act of Congress approved June 10, 1920."

Bear in mind, this is the company's own statement that this particular item was for services rendered by their attorneys in promoting the water-power legislation which culminated in the act of 1920; and this item, thus paid for lobbying here in Washington to get an act passed by the Congress of the United States, is charged up as a legitimate expense against one of the projects for which the company was seeking or had secured a license.

Senator WHEELER That was for lobbying fees, as I understand.

The CHAIRMAN. How much was that?

Mr. KING. The fees aggregate——

The CHAIRMAN (interposing). How much was paid that firm that you just referred to, or does it say?

Mr. KING. Something more than $160,000. I have the details here if the committee would like to have them.

The CHAIRMAN. Something more than $160,000?

Mr. KING. Yes, sir.

The CHAIRMAN. I thought you were just talking about $139,000.

Senator PINE. There were two items, Mr. Chairman.

Mr. KING. There are four or five projects involved. The $139,000 item included only two or three of them. There was an additional $26,000——

The CHAIRMAN (interposing). It seems to me it would be interesting to the committee if you would make up a statement which you could verify and submit under oath of all these cases which are in question, such as you have briefly enumerated. Could you do that?

Such a statement was subsequently offered, and I shall later offer it for the RECORD.

I turn, however, in this connection, to pages 60 and 61 of the hearings, from which I read as follows:

Senator WHEELER. There are other companies that you have not told us about where they have filed these fictitious claims and tried to put them into their capital cost, aren't there?

Mr. KING. Oh, there are a great many.

Senator WHEELER. There was one up in Connecticut, wasn't there?

Mr. KING. Yes, sir.

Senator WHEELER. What was the name of that company?

Mr. KING. The Northern Connecticut Power Co.

Senator WHEELER. What was the amount that they tried to put in?

Mr. KING. I do not have the exact figures. They put in a claim for something more than a million dollars of prelicense cost. That is, cost up to the date when the license was issued. There was a reorganization in that case, and an issuance of securities, and there was a syndicate that had charge of it. And what we really got when we asked for the prelicense cost statement were expenditures claimed to have been made by this syndicate which handled the situation in connection with the consolidation or merger or issuance of securities and things of that kind, and in the accounts we found that several years ago the company had arbitrarily made an entry placing the value, as I recall, of $1,050,000 upon those water rights. Thereafter that item was investigated by the income-tax section of the Bureau of Internal Revenue, and there was a proposal to assess some kind of tax upon that value, and at that time the company claimed that the entry did not represent the real value but simply a fictitious value which had been put on the books, and that they did not wish to be taxed upon it.

Senator WHEELER. So that when they appeared before the Treasury Department they claimed it was a fictitious value, although they set it up in their capital value when they appeared before the Federal Power Commission. Is that right?

Mr. KING. That was about the size of it. That was about what happened.

Mr. COUZENS. Mr. President, may I interrupt the Senator at that point?

The PRESIDING OFFICER (Mr. FESS in the chair). Does the Senator from Montana yield to the Senator from Michigan?

Mr. WALSH of Montana. Yes.

Mr. COUZENS. I wonder if the Senate understands that the real authority, the Federal Power Commissioners themselves, have never determined those matters.

Mr. WALSH of Montana. Oh, I assume so. I think the testimony is that in some way or other, either because the members of the commission as it was then constituted—the Secretary of the Interior, the Secretary of War, and the Secretary of Agriculture—were engrossed with their other duties, or for some other reason the nature of which is not disclosed, apparently the commission never took up any of these matters and determined the right or wrong of any of these contentions. So at the present time we are obliged simply to confine ourselves to saying that these are items which are challenged by the accounting office of the commission.

Mr. COUZENS. Mr. President, will the Senator yield further?

Mr. WALSH of Montana. I yield.

Mr. COUZENS. I agree entirely; but an impression seems to have gone out through the country that the contention of Bonner has been sustained by the commission, which is not a fact. I think the action of King in pointing out these matters was perfectly proper, and I think it was wholly improper for Bonner to contest them; but in the final analysis no authoritative body has ever determined whether or not those accounts should be included in the capital cost.

Mr. WALSH of Montana. That is what I understand from the testimony.

Mr. WHEELER. Mr. President, will my colleague yield?

The PRESIDING OFFICER. Does the Senator from Montana yield to his colleague?

Mr. WALSH of Montana. I yield.

Mr. WHEELER. I think it is proper that it should go out to the country, however, that the views of Bonner have been sustained by the administration because of their actions in this matter in this respect: Russell, the man who made it possible that these facts should be brought to light, is discharged by the new commission and kicked out of office, while Bonner is taken over into the lap of the Secretary of the Interior, and, as I understand, is put on the pay roll at an increased salary. I may be mistaken about the increase in salary, but that is the information that has been furnished me. At any rate, Bonner has been taken over by the administration and given employment in another department under Secretary Wilbur, while Mr. Russell and Mr. King, because of the fight that they made for these things, were kicked out.

Under those circumstances, I do not see how anyone can come to any other conclusion excepting that the administration favored Bonner; and, if my colleague will pardon me, Bonner repeatedly made the statement to members of his staff that he was acting under orders directly from the President of the United States.

Mr. WALSH of Montana. Mr. President, I am calling attention to these items because many of them, aggregating immense sums, appear on their face to be entirely indefensible; and I am emphasizing the fact that Russell and King were instrumental in calling attention to these particular items; and I am later going to call attention to the fact that Bonner was treating all of these matters lightly, and continually upbraiding Russell and King for giving their attention to these matters. Indeed, Mr. President, he belittles the whole thing, and calls attention to some trifling matters to which he claims that King and Russell were devoting much attention—little matters of five or ten dollars, or something of that kind.

Mr. COUZENS. Mr. President——

Mr. WALSH of Montana. I yield to the Senator.

Mr. COUZENS. I just want to say that I agree entirely with what the Senator says about the matter.

Mr. WALSH of Montana. Let me remark that apparently every member of the committee agreed with what I say in this connection.

Mr. COUZENS. Yes; I do not think there was any division in the committee with respect to standpatters or radicals or Republicans or Democrats. We all agreed that Bonner's contention was reprehensible; but I want to point out that he did not get away with it. I do not want the country to believe that a man like Bonner got away with that sort of thing.

Mr. WALSH of Montana. I should deplore it if anything I say here should leave that impression. I want it distinctly understood that none of these items ever had the sanction or approval of the Power Commission.

Mr. COUZENS. Mr. President, will the Senator yield further?

Mr. WALSH of Montana. Yes.

Mr. COUZENS. But the Senator's colleague wants it to go out that because of this controversy, on which the Interstate Commerce Committee—of which the junior Senator from Montana is a member—are entirely in agreement, Mr. Bonner's position has been indorsed by the Power Commission or the President or some one else. No one in authority has indorsed the position of Bonner—that is, of record—and it is a wrong impression to go out to say that anybody agreed with Bonner just because Bonner has been retained in some other department.

Mr. WALSH of Montana. If I understand aright the contention of my colleague, he insists that the dismissal of King and Russell and the retention of Bonner in the service is an implied approval or indorsement of the work that he has been doing and the attitude that he has been taking. I think there is something in that contention myself.

Mr. COUZENS. Mr. President, will the Senator yield?

Mr. WALSH of Montana. I yield.

Mr. COUZENS. I should hope that the country would not accept that as in any way conclusive, because I can understand that in an organization as big as the Federal Government a man of Bonner's engineering ability might be adaptable somewhere else when he might not be adaptable as executive secretary of the Power Commission because of his tendencies. I do not want it understood that, so far as I am concerned, while disagreeing entirely with Bonner I agree with the contentions of my friend the junior Senator from Montana that this is an implication or in any way conclusive that the final judgment will be as recommended by Bonner.

Mr. WHEELER. Mr. President, if my colleague will yield——

Mr. WALSH of Montana. I yield.

Mr. WHEELER. Let me say to the Senator from Michigan that I do not see how anybody can put any other interpretation on the matter, in view of the chain of circumstances which have happened. In the first place, Russell and King were discharged because, it was said, there were bickerings up there. Bickerings over what? Bickerings over one of the most fundamental propositions that faces this country to-day. There is a disagreement, Russell and King are fired, and the other man is retained. Why were Russell and King fired? They were fired because of the fact that they were bickering, because of the fact that they were fighting to do just exactly what the Senator says he thinks they should have done and what he says the whole committee feels they should have done. I do not agree with the Senator that all of the members of the committee agreed with Russell and did not agree with Bonner. I do think there was some division, probably, in the minds of the committee with reference to whether Russell was right or whether he was wrong; but the fact remains that Russell made the statement that Bonner has repeatedly stated that as a matter of fact he was acting under orders from the President and he was not bound by anybody else.

Mr. COUZENS. There was no evidence to that effect. There was no evidence submitted to the committee at any time that Bonner was acting under the instructions of the President.

Mr. WHEELER. No; the Senator is correct about that, but I am simply saying, and I have stated upon the floor of the Senate, that my information is that Mr. Bonner not only said that to Mr. Russell but said it to other officers up there, and that that has been repeatedly said. When we take that into consideration, with the subsequent actions of the commission, backed up by the President of the United States, what other conclusion can we come to? I expect in the near future to offer a resolution asking that certain correspondence in connection with this particular matter which I am told was had between the President of the United States and the heads of some departments be sent to the Senate.

Mr. KEAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from New Jersey?

Mr. WALSH of Montana. I yield.

Mr. KEAN. As a member of the committee, I would like to say that I think, as the chairman of the committee does, that there was not a single member of the committee who was not opposed to Mr. Bonner's methods, who was not opposed to the stand which he took. But in regard to these other two gentlemen, it seems to me that they were only doing their duty, the same as a railroad accountant and a railroad lawyer would have done. When a contract is let for the construction of a piece of road, the contractor tries to put everything into the work he possibly can put. Then the accountant for the railroad and counsel for the railroad say, "We will not allow this, we will not allow that, and we will not allow the other item." That is their duty, and I think these two men did only their duty, which they were employed to do, no further, no less, and to try to make them great heroes I think is going beyond the mark.

Mr. NORRIS. Mr. President, will the Senator yield?

Mr. WALSH of Montana. If the Senator will pardon me just a moment; I am very glad to have this testimony from the Senator from New Jersey to the effect that these men were doing their duty and doing what they were employed to do. Of course, as to their being heroes or otherwise, that is another matter; but the important statement of the Senator is—and I get the same impression from the testimony, and I think every member of the committee did, so far as that is concerned—that these men were simply doing their duty, and what they were required to do by the law under the circumstances.

I now yield to the Senator from Nebraska.

Mr. NORRIS. Mr. President, the Senator has to a great extent answered the suggestion I was about to make. It seems to be conceded that Russell and King did their duty as they saw it, that they were right, that they were advocating something that was right, and that Bonner was on the other side. Nobody defends him. But after these men had done their duty, and after Bonner had tried to prevent them from doing their duty, then comes the finale of the whole thing. Those who have done their duty are fired and the man who stood out against the Government and tried to prevent these men from doing their duty is promoted. If that does not carry the implication further than these men whether they are heroes or not may be an entirely different and immaterial thing, I do not know what could.

Mr. CARAWAY. Mr. President, what reason was ever urged for the discharge of King and Russell?

Mr. WALSH of Montana. The reason assigned was that there was friction between them and Bonner.

Mr. CARAWAY. But Bonner was promoted. Why were the others discharged? According to the defendants of the action, they had been doing their duty all the time.

Mr. WALSH of Montana. Exactly; that is the situation.

Mr. CARAWAY. I presume then for doing their duty they were discharged.

Mr. WALSH of Montana. That is the only deduction which can be drawn from the testimony.

Mr. President, the colloquy has directed attention to the fact that none of these matters seem ever to have been determined, even if they were ever heard and considered by the Power Commission itself. The chairman of the Committee on Interstate Commerce directed attention to that feature of the matter in the hearing. I read from page 54:

The CHAIRMAN. How many projects have you had since the Federal Power Commission started?

Mr. KING. About 100 major projects.

The CHAIRMAN. Well, as to those 100 major projects, it would not be difficult to find out how much had been put into those projects and the nature of the items, such as you have just been reading, would it?

Mr. KING. You have reference to this legislative expense?

The CHAIRMAN. No; to expenses that you think are not legitimate.

Mr. KING. That would include a great many, Senator. It would be quite a task to get that up, because so far the Federal Power Commission has not disposed of any really important case, and in practically every project items are questioned. You see, these cases have just been piling up year after year, and the commission has not taken any action on them.

Senator WHEELER. Why not?

Mr. KING. For the reason, as I attempted to explain, perhaps before you came in, Senator WHEELER, that Mr. Merrill, the former executive secretary, never felt he had the organization facilities properly to present the cases to the commission and carry them to the courts for a final decision if necessary.

The CHAIRMAN. In other words, Mr. Merrill thought that before these matters could be determined there might be some litigation?

Mr. KING. He felt, I am quite sure, and I have always felt that a number of these cases would be carried to the courts and probably even to the Supreme Court of the United States, because there are some very important questions involved.

Senator WHEELER. But I can not understand why he could not have at least taken some of these cases and presented them to the commission and have the commission make its ruling upon them, and then if the power companies wanted to carry them to court they could do it. You have them all figured out, have you not?

Mr. KING. We have a great many of them.

The particular object I have in reading this testimony is to make perfectly clear the nature of the controversy which gave rise to this so-called friction in the commission. I read now from page 55:

The CHAIRMAN (interposing). Did you have any trouble with either Executive Secretary Merrill or Executive Secretary Bonner concerning these matters?

Mr. KING. Not with Executive Secretary Merrill. We worked along together fine.

The CHAIRMAN. What trouble have you had with Executive Secretary Bonner?

Mr. KING. The trouble with Mr. Bonner and myself, if you may so characterize it, is that our views are very different. I think Mr. Bonner did not understand the situation as I understand it. And he seemed to be more in sympathy with the power interests than I am. And he is rather inclined to neglect the interests of the public of the United States. Now, that may be a very severe criticism of Mr. Bonner, but that is the way it has appeared to me.

I pass now to page 62:

Mr. KING. I shouldn't put it just that way, Senator. There has been a disposition upon the part of the executive secretary to rush the work I would say, to rather skip over it and to get results without much regard to the methods employed. And he has been inclined to refer a great deal of the accounting work to the departments.

Senator WHEELER. To what departments?

Mr. KING. To the Departments of War, Interior, and Agriculture. That means to the field offices of these departments. You understand that each department has a field office. The War Department has an engineering department here in Washington, and then it has division offices, and then those division offices have their branch offices. The Department of Agriculture has the Forestry Service, which does most of the engineering work for the Federal Power Commission in the field. The Department of the Interior has the United States Geological Survey, and it has district offices. Now, it is Mr. Bonner's plan to refer accounting work so far as possible to these field agencies, which are primarily engineering organizations.

Senator WHEELER. And not accounting.

Mr. KING. And they are not accountants. They have not the accountants, in my opinion, capable of doing the work, even if they had the time to do it. All the accountants in these branch offices have their regular work to do, and we have letters from these agencies, or the departments, saying that they are not equipped to do the accounting work, and that if they are called upon to do it it would be necessary to increase their personnel and to employ some one to do it, that their present forces are not organized to do work of that kind.

Senator WHEELER. In addition to that would it not disorganize the Federal Power Commission?

Mr. KING. Oh, I have already testified before the Appropriations Committee that in my opinion it was not practicable to have this accounting work done by the field agencies. They are not equipped to do it. They have not accountants of the grade that is necessary to perform this kind of work. They have no conception of what work is involved. They know very little of the Federal water power act or of its intents and purposes.

Right along that line it was Mr. Bonner's plan to refer to the departments largely the determination of the preliminary or the prelicense costs of projects. I want to read from paragraph 36 and also paragraph 37 of the memorandum which is attached to the letter of the commission dated January 28, 1928, addressed to the chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives:

"There are two general groups of expenditures incurred in the development of power projects licensed by the commission: (1) Those incurred prior to the issuance of license; and (2) those incurred subsequent thereto. Since all licensees are subject to the accounting regulations of the commission which, among other things, require preservation of vouchers or other evidence of expenditures, audit of 'post-license' claims is primarily concerned with determining not whether the expenditure has actually been made but whether it is a proper charge against plant investment account. With 'prelicense' claims, on the other hand, it is necessary to determine not only whether the claims may properly be classified as capital costs but also whether they are actual legitimate costs as defined in the act.

"Many projects for which applications for license are filed have been under promotion and in the process of development for many years; in some cases by individuals and in others by corporations. Expenditures have been made for preliminary surveys and tests. Payments have been made to lawyers and engineers for services. Properties in the way of lands, water rights, and flowage rights have been acquired. There have in some cases been law suits, receiverships, proceedings in bankruptcy, reorganizations, and transfers of ownership. Individuals have sold their rights and interests to other individuals or corporations, or, after acquiring property as individuals, have organized a corporation and transferred the property to it."

Thus, Mr. President, the commission itself, in its report to Congress, has indicated the difficulties and intricacies involved in the proposition of accounting and the determination of costs, either prelicense cost or construction costs after the license has been granted.

Senator WHEELER. Now, those are things that Mr. Bonner wants the engineers in these other departments, in addition to their own work, and for which they are hardly prepared to pass upon, to take charge of instead of turning them over to the legal division and the accounting division of the Federal Power Commission; isn't that true?

Mr. KING. These are the kind of cases he wants to refer to the departments in order to expedite their handling, so that licenses can be issued without any delay.

Senator WHEELER. And isn't it true that the reason why he wants it referred to these other departments is to practically take it out of your hands because of the fact that he feels that you have been too strict with the power companies?

Mr. KING. Well, there might be something in that.

Senator WHEELER. Don't you know that that is a fact?

Mr. KING. He relies upon the provision of the act which says the work of the commission shall be done by the several departments. But at the same time I think he overlooks the fact that the larger part of the commission's personnel is composed of engineers, and I have not heard any suggestion of any engineer being taken off the commission's pay roll, or of any engineering work being referred to the departments, other than what has already been done. In other words, we have a larger engineering organization, which is paid by the commission from its appropriation. We have a very small, or have had a very small, accounting organization, and there is no disposition on behalf of the executive secretary to increase that personnel.

Senator WHEELER. Of the accounting division?

Mr. KING. Yes, sir; of the accounting division. Now, I have said on other occasions and I want to repeat it here, that what the commission needs now as it is at present organized is an organization in Washington to handle these cases as they are presented; accountants to go out in the field and make examinations and make reports, and when they come into the Washington office there is no organization to handle it. We have a solicitor now, but we have had him for only a few months, and prior to that we had no one. Accounts would come in and——

Senator WHEELER (interposing). I have understood that Mr. Bonner wanted to get rid of the solicitor, too.

Mr. KING. That has been suggested. We need some one to hold hearings, so that we may have hearings and have some one to look after the details of cases when they are presented; to prepare them for hearing before the commission, and after hearing to take matters to court if necessary, and to dispose of them, and get a decision on them, and to do something which will give the accounting division a basis upon which to proceed. Heretofore we have had no opinions, no decisions. We do not know what the commission thinks on these various accounting questions that we have presented from time to time. And there are some very important questions involved, which in the aggregate involve millions of dollars.

I now pass to page 71 of the hearings. There will be found, commencing on page 65, a copy of a report made by the commission, prepared by the staff of the commission, and presented to the House Committee on Interstate and Foreign Commerce, and subsequently withdrawn by the commission and certain provisions thereof eliminated. Those which were eliminated are of particular interest here. I shall ask that there be incorporated in the RECORD sections 26 to 36 of this report, and sections 46 to 51, all of which were, at the instance of the power companies, eliminated from the report and a revised report submitted to the House excluding those paragraphs.

The VICE PRESIDENT. Without objection, it is so ordered.

The matter referred to is as follows:

26. A case which illustrates some of the problems involved in valuations is that of the Niagara Falls Power Co. This company

was given on March 2, 1921, a license covering four existing power plants in the Niagara River at Niagara Falls, hydraulic plants No. 2 and No. 3 with its extension and Niagara Plants Nos. 1 and 2, having an aggregate installation of 312,450 horsepower. The license also gave authority for the construction of a further extension to hydraulic plant No. 3 to develop an additional 210,000 horsepower. The license provided that "the fair value of the completed parts of the project as of the date of this license shall be determined as early as practicable in the manner prescribed in the act, and the licensee hereby agrees to accept for the purpose of this license and of any provisions of the act the fair value so determined, whether arrived at by mutual agreement or as a result of proceedings in or final adjudication by the courts."

27. The records of the Niagara Falls Power Co. have been examined from time to time by the accountants of the commission and a report of such examination was made by one of the accountants in January, 1927. The report could not be completed because access to certain records of the constituent companies was refused. The examination disclosed that considerable property which had been abandoned and demolished was still carried in whole or in part in the plant investment account; that many large amounts in connection with new construction appeared to have been erroneously charged to property investment; and that many millions of dollars carried in the plant investment account did not represent actual investment either by the company or by its predecessors.

28. The Niagara Falls Power Co. was formed by the consolidation in 1918 of a former corporation by the same name, of Hydraulic Power Co., and of Cliff Electrical Distributing Co. The last-named company had been organized on March 16, 1909, and there had been transferred to it that part of the property of Niagara Falls Hydraulic Power & Manufacturing Co. which was used in generating and distributing electric energy for use in public service. The Public Service Commission of the State of New York had been created in 1907 with authority over accounts, rates, services, and securities of public-utility corporations. It was, presumably, for the purpose of avoiding supervision by that commission over the major parts of its operations that such transfer was made by Niagara Falls Hydraulic Power & Manufacturing Co. The transferred properties appear to have been carried on the books of the transferor for approximately $422,000. The transferee paid for the properties $500,000 in bonds and $250,000 in stock, or $328,000 in excess of book costs to the transferor, an increase of 78 per cent.

29. In 1910 the stockholders of Niagara Falls Hydraulic Power & Manufacturing Co. organized Hydraulic Power Co. of Niagara Falls and transferred to the latter company the properties and business of the former. At the time of the transfer the fixed capital account of the original company stood at $3,973,716.65. The new company issued its capital stock in the amount of $12,000,000 in payment for the property and business transferred. The new corporation set up on its books under the caption "purchased property" as an asset item, $15,771,208.90, or nearly $12,000,000 in excess of the amount carried in the fixed capital account of its predecessor. This transaction and that connected with the organization of Cliff Electrical Distributing Co. added $12,123,964 to investment accounts which prior to transfer had aggregated $4.395,245, an increase of 282 per cent.

30. Niagara River Hydraulic Tunnel, Power & Sewer Co. was incorporated in 1886 by special act of the State legislature. By order of the supreme court the name of the corporation was changed in November, 1889, to the Niagara Falls Power Co. On April 1, 1890, in pursuance of a preliminary contract of the preceding year, a formal contract was executed with Cataract Construction Co. for the acquisition of property and for the construction of a power plant for the Niagara Falls Power Co. There are differences of opinion as to what relation, if any, other than contractual, existed between the power company and the construction company. The contract provided for a "profit" to the construction company variously stated as from 25 to 33⅓ per cent. The report of the examiners of the New York Public Service Commission show that the power company paid to the construction company a total of $9,892,239, of which $6,887,225 was for "land and rights" and for "other capital property." The remainder consisted of $1,189,864 for "construction overhead," or 17.3 per cent of the total direct cost, and $1,815,150 for "profit," or 26.4 per cent of such cost. The aggregate of the inflations of capital account previously mentioned, plus the "profit" paid to Cataract Construction Co. amounts to approximately $14,000,000 out of the aggregate property investment account of $34,500,000 existing at the time of the consolidation. The latter figure was, after the consolidation, entered on the books of the new company, the Niagara Falls Power Co., as an undistributed item representing the company's property investment as of the date of consolidation.

31. Since the commission has never been in a position to prosecute this case to a conclusion, there has never been a formal proceeding to determine the "fair value" of the Niagara Falls project, and the company has never filed a formal statement of its claims. It did, however, transmit to the commission through the district engineer at Buffalo an inventory and appraisal as of the date of the license, March 2, 1921, of the project property in existence at the date of the consolidation in 1918, made by American Appraisal Co., of Milwaukee, at the request of the company. It is understood that this constitutes the company's claim for fair value. The appraisal shows—

Tangible fixed capital (that is, lands, structures, and equipment)	$31,190,974
Intangible property	5,762,143
Overhead costs	8,718,334
Water and rights	32,000,000
An aggregate of	77,671,451

This aggregate represents what appears to be the claim for "fair value" of the property which was transferred on the books at the time of the consolidation at $34,500,000, and which appears to have represented not more than $20,500,000 of actual investment.

32. Adjustments made up to December 31, 1925, in the accounts of the properties transferred for the $34,500,000, make that item $31,620,983, or very nearly the same as the "tangible fixed capital" in the tabulation above. Increase over costs for the purpose of determining "value" for which the appraisal stands sponsor, is, therefore, approximately the sum total of the three new items, "intangible property," "overhead costs," and "water rights," or $46,000,000, and is in addition to the $14,000,000 of similar inflation appearing in the $34,500,000. To the total of $77,671,451 the appraisal adds "charges for new construction" of $27,465,125, making a grand total of $105,136,577. In the total for new construction there are included many questionable items, and there has been failure to give appropriate credit for properties abandoned.

33. The wide divergence between actual investment, which is the general basis recognized by the Federal water power act, and claims for "fair value" under the provisions of section 23 of the act in circumstances where that section applies, as that divergence is illustrated in many of the valuation cases before the commission, must inevitably lead to a judicial interpretation of the term "fair value" as used in the act—to a determination of whether this term is to be given a meaning independent of, or in harmony with, other provisions of the act.

34. The commission can not with its present force undertake to carry these cases to a conclusion. To do so without technical preparation and without experienced legal assistance would be foolishly to risk scores of millions of dollars; for the amounts finally determined in these proceedings will be the amounts which the United States would be required to pay if it ever exercised its option to purchase at the termination of a license. They are likewise the amounts which would serve as the rate base if the commission ever exercised its authority of rate regulation. The settlement of this class of cases and of other similar cases to be later discussed is, from the standpoint of the public interest, one of the most important features of the administration of the Federal water power act.

SUPERVISION

35. Under the authority of the act the commission exercises a certain degree of supervision over its licensees with respect to construction, maintenance, and operation of project works, to collection and maintenance of records, to standards of accounting, and to issuance of securities.

Project works: When project works are located in navigable waters where their construction and maintenance would affect navigation, the work of construction is under the direct supervision of the district engineer of the War Department who acts both for that department and for the commission. Supervision over operation and maintenance of such projects is likewise exercised to the extent necessary to avoid interference with navigation. The following clause is a standard requirement in licenses for projects where the interests of navigation are involved:

"That the operations of the licensee so far as they affect the use, storage, and discharge from storage of waters of the river shall at all times be controlled by such reasonable rules and regulations as the Secretary of War may prescribe in the interests of navigation and as the Federal Power Commission may prescribe in the interests of flood control and of the fullest practicable utilization of said waters for power purposes."

36. Where navigation interests are not involved, supervision is exercised only in special cases or for specific purposes, such as approval of designs of dams, or of the character of foundations, as a means of public safety; and determination of extent and character of clearing of reservoir sites and of rights of way as a measure of public health, of avoidance of fire hazard, or of preservation of natural scenic features. In cases where attractive scenic areas are involved the following clause is inserted in licenses:

"The licensee shall during the period of construction preserve to the greatest practicable extent the scenic beauty of the territory within the project area and before the completion of said construction shall restore, in so far as it is possible at reasonable cost, such scenic beauty as may have been injured by operations under control of the licensee. Borrow pits and dumps shall be so located as to cause least scenic injury consistent with reasonable construction costs. Excavations and fills when unavoidable shall be left in a neat condition, and shall, if not thereby interfering with the operations of the project, be planted with grass, vines, or shrubs. Unnecessary cutting of trees except when complete clearing is required shall be avoided, and all brush and refuse incident to cutting or clearing shall be removed or destroyed. When any operations pertaining to the construction, maintenance, or operation of the project works are proposed that would materially mar the natural beauty, such operations shall not be undertaken un-

less and until the approval of the representative of the commission charged with supervision of the project has been secured as to the method of conducting such work and the means proposed to be employed to protect the scenery and to remedy any damage temporarily inflicted."

* * * * * * *

46. An example of claims for interest during the prelicense period is afforded in the case of Chelan Electric Co., Washington, to which license for a power project at the outlet of Chelan Lake was issued on May 8, 1926. It appears that the company in 1907 acquired the properties of a former company which has a small power plant and which also supplied domestic water in the town of Chelan Falls, and that during the year prior to such acquisition one J. T. McChesney expended some $262,200 for lands and rights looking to a larger development which might supply energy for Great Northern Railway Co. In connection with this transaction Chelan Electric Co. issued stock at par value of $500,000. This stock was purchased by the railway company at a price sufficient to pay for McChesney's expenditures. From time to time thereafter Great Northern Railway Co. made cash advances to Chelan Electric Co., these advances aggregating $858,992. Shortly after the issuance of license, the Washington Water Power Co. appears to have acquired for $1,500,000 the interests of Great Northern Railway Co. in Chelan Electric Co. In the claims of prelicense costs the Washington Water Power Co., acting for Chelan Electric Co., includes only compound interest to May 7, 1926, at 6 per cent on the advances of the railway company, such interest amounting to $342,499, but also $516,600 as compound interest at the same rate from the latter part of 1907 to May 7, 1926, on the $262,200 paid by Great Northern Railway Co. for the $500,000 par value of stock of Chelan Electric Co. The total of interest thus claimed, $859,000, is 78 per cent of the total claimed to have been actually paid for all the properties purchased by or on behalf of Chelan Electric Co. up to the date of the license. No evidence has been presented to show that the $516,600 of additional interest has been paid, or is intended to be paid. There have been many other cases where accrued but unpaid interest charges comprise a very substantial part of alleged prelicense costs.

47. An example of claims of "prelicense costs" is afforded in the Conowingo project on the Susquehanna River in Maryland and Pennsylvania, license for which was issued on February 20, 1926. The project had been under way in one form or another for over 40 years. Involved in the final development were 4 corporations, 2 organized in Maryland and 2 in Pennsylvania. One corporation from each State became a licensee and the other two were made parties to the license. Accompanying the application for license was claim for some $9,000,000 of "prelicense costs." Since many months would be required to examine the accounts and reach decision upon the costs, and since it was desirable that construction be not delayed until decision could be reached, the commission authorized issuance of license subject to the following condition, which condition was incorporated in the license:

"(c) The costs of said project up to date of issuance of license shall be fixed jointly by the Public Service Commission of Pennsylvania, the Public Service Commission of Maryland, and the Federal Power Commission; it being understood, however, that if said bodies shall not unanimously agree on said cost, then the Federal Power Commission and the Public Service Commission of Maryland shall fix said cost of properties within the State of Maryland, and the Federal Power Commission and the Public Service Commission of Pennsylvania shall fix said cost of properties within the State of Pennsylvania, and that the sum of said findings shall constitute the cost of said properties to the date of the license; and it being further understood that if said agreement shall not be reached within six months, then the Federal Power Commission shall fix an amount which, in its opinion, represents said cost; and that no amounts in excess of the total so fixed shall be entered upon the capital accounts of the licensees as representing the cost of the project to said date."

48. Subsequent to issuance of license and through cooperation between the Federal Power Commission and the Public Service Commissions of Maryland and Pennsylvania a joint auditing committee was formed consisting of one accountant from the Federal Power Commission and one each from the two State commissions. This committee spent six months in examining the involved records of the various corporations which at one time or another had made expenditures now claimed as prelicense costs. In a joint report filed with the three commissions on September 18, 1926, the committee reported that of a total of $7,246,832.07 appearing on the books of the various corporations as costs of the project, $3,090,253.14 appeared to be actual legitimate project costs, $3,443,708.35 appeared not to be a proper charge to the project, and the balance of $712,870.58 was doubtful and should be included in the project costs only if supported by affirmative evidence. This report was submitted to the licensees for comment and on November 1, 1926, they filed with the commission an itemized claim of prelicense costs of $7,308,527.12. Of this total, $2,223,797.72 represented "property acquired" (lands, flowage rights, securities of other corporations, etc.); $347,906.31, payment for services of Bertron, Griscom & Co., bankers; $888,013.12, preliminary engineering investigations; $598,498.39, legal services and expenses, $98,733.54, "other fees and expenses"; and $2,145,191.68, interest. The balance of $1,006,386.36 was claimed as the "value" of the class B stock of one of the licensees—securities which appear to have little or no value. Of the total claimed only 30 per cent represents original cost of property.

49. To reach final determination of prelicense costs a joint hearing of representatives of the three commissions was called in Washington on February 16, 1927, at which attorneys of the licensees appeared, raised technical objections to the hearing, and asked for postponement. The meeting was adjourned to consider the objections raised. In view of the fact that millions of dollars are at issue and that action in the courts may be necessary not only with relation to prelicense costs but also on account of what appears to be violation of the commission's order on security issues, it has been deemed inadvisable to prosecute this matter further until the commission can be equipped to handle it in the manner which the amounts at issue demand.

50. As an example of inflation of fixed capital accounts through charges for construction, as well as through prelicense costs, may be cited the Clarion River project of Clarion River Power Co., of Pennsylvania. From such information as has been secured the history of this case is as follows: The company was organized in 1912 by one J. R. Paull, who, having apparently failed to obtain the necessary financial backing, sold about 1919 a controlling interest in the corporation to H. D. Walbridge & Co., New York bankers. Walbridge & Co. at that time controlled certain public-utility companies in Pennsylvania, a realty company, and a construction company known as General Construction Corporation. License for the project was issued by the commission on October 13, 1922. Construction was financed by the issuance of $5,347,000 of bonds and $4,518,000 of stocks. Securities of the corporation at par appear to have been paid to General Construction Corporation for the construction of the project, to J. R. Paull for services and expenses in promoting the corporation, and to H. D. Walbridge & Co. for expenditures made and services rendered. Book costs of the Clarion River development show a total of $11,032,816.57.

The expenditures on actual construction work appear to be approximately $4,360,000. To this is added a supervision fee of $400,000 paid to an engineering firm employed by General Construction Corporation; reservoir lands, $153,000; interest, $754,000; and other miscellaneous items making a total of $5,773,000. To this amount, which probably represents the maximum of actual legitimate construction costs, is added $451,000, par value of stock issued to J. R. Paull for promotion and for preliminary investigations; $2,214,000, par value of stock issued to H. D. Walbridge & Co. for "services"; and $2,595,000, General Construction Corporation for "services and expenses." Of the total charged for "services" of H. D. Walbridge & Co., $1,119,900 is for engineering services and exploration work, a part in connection with two other projected developments; $200,000 is a fee for securing the construction contract with General Construction Corporation, which Walbridge & Co. controlled; $300,000 is a fee for securing from Penn Public Service Corporation, which Walbridge & Co. controlled, a contract to purchase the output of the plant when constructed; $200,000 is a fee for securing a contract with the same company to guarantee payment of principal and interest on Clarion River Power Co.'s bonds; and $294,100 is for expenses in connection with issuance of securities.

The payments to General Construction Corporation consist primarily of a fee of $2,550,000, paid likewise in securities, for "general engineering and supervision," or more than 50 per cent of the actual cost of construction, this being in addition to the above-named fee of $400,000 paid for "supervision" to an engineering firm employed by General Construction Corporation. The book costs of this project are probably inflated by not less than $4,000,000, and possibly by much more. Vouchers and other original records in support of less than $5,000,000 of total book costs have been furnished for inspection. More than $6,000,000 of alleged cost is represented merely by entries on the books and is supported by evidence of expenditure or cost. Original records necessary for determining costs are supposed to be in possession of H. D. Walbridge & Co., but access to them has been refused. The commission has examined such books and records of the licensee as have been made available for inspection. The licensee corporation is now controlled by Associated Gas & Electric Co., a holding company. Further action is dependent upon securing means to prosecute such cases of apparently flagrant lack of compliance with the law.

51. Not all licensees, of course, make claims of the character above illustrated; but since under the Federal water power act actual cost is the basis of accounting, of rate regulation, of security issues, and of recapture, every licensee endeavors to enter in its fixed capital accounts every possible dollar in the hope that the commission will authorize the entry, or will not be in a position to check the entries, or, if later they are found improper, will be unable to eliminate them.

The commission is examining the accounts of its licensees and is reaching agreements or issuing orders as rapidly as is possible with the force available. Its accomplishments to date are as follows: There are 12 cases in which licenses have made specific provision for the determination of prelicense costs. In three of these cases, involving $320,000, determination has been made. The remaining nine cases, involving claims of $20,137,000, have not been settled, but investigations are now under way. Of projects constructed under license, agreements on costs have been reached in 10 cases, involving 49,000 horsepower and $6,600,000. In addition, the accounts have been examined in the cases of six such projects, having an installation of 255,000 horsepower and claims of cost of $55,550,000. Including the valuation cases described in paragraph 23, the commission so far has reached settlements involving about $21,100,000 and has partly or completely audited about $10,000,000 more. This is the result of seven years' work.

Mr. WALSH of Montana. Those paragraphs refer to the Niagara Falls Power Co., and recite some of the claims made by the Niagara Falls Power Co., to which reference has been made in other portions of the hearings.

Mr. CUTTING. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from New Mexico?

Mr. WALSH of Montana. I yield.

Mr. CUTTING. I came into the Chamber only a few minutes ago. I would like to ask the Senator if I am correct in understanding the Senator from New Jersey [Mr. KEAN] to have said that the Interstate Commerce Committee was unanimous in believing that Messrs. King and Russell had done their duty and that Mr. Bonner had not done his duty?

Mr. WALSH of Montana. I do not remember that the Senator from New Jersey mentioned any opinion as to Mr. Bonner. I yield to him to answer the Senator from New Mexico.

Mr. KEAN. I said that I thought the committee was unanimous in saying that Mr. Bonner had not done his duty and was not doing his duty. I did not say as to the others that it was the unanimous opinion of the committee, because that question did not come up, but it did come up as to Mr. Bonner in regard to power companies.

Mr. CUTTING. Does the Senator state that it is his opinion that those gentlemen had done their duty?

Mr. KEAN. I said I thought those gentlemen had done what was plainly their duty under the law; nothing more and nothing less.

Mr. CUTTING. It just occurred to me that it was unfortunate that the administration had seemed to take a directly contrary position to that taken by the Senator from New Jersey in the case of Messrs. King and Russell and to the unanimous opinion of the Interstate Commerce Committee in the case of Mr. Bonner, because they promoted Mr. Bonner and removed Mr. Russell.

Mr. KEAN. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield further to the Senator from New Jersey?

Mr. WALSH of Montana. Certainly.

Mr. KEAN. It may have been and probably was that in the department they found that these gentlemen were doing things which interfered with the orderly procedure of the department and that therefore the new commissioners thought that the way to get a proper organization in the department was to decline to reappoint all three of them, in order that they might get efficient service in the department.

Mr. WALSH of Montana. Mr. President, the paragraphs eliminated from the original report and not appearing in the subsequent report substituted for that which was withdrawn, were quite critical of the Niagara Falls Power Co. in connection with some of the items entering into its prelicense account to which reference has been made. There is included within it a table giving the items entering into the claim of the Niagara Falls Power Co. of prelicense cost an item of $77,671,451, which includes water and water rights, $32,000,000 of the $77,000,000, determined by the Supreme Court of the United States, as I said awhile ago, in the Dunbar case to have no foundation whatever. The commission continued:

> This aggregate represents what appears to be the claim for "fair value" of the property which was transferred on the books at the time of the consolidation at $34,500,000, and which appears to have represented not more than $20,500,000 of actual investment.

This, it will be understood, is a recital not of Mr. King at all, but of the commission itself. The excised portions of the report refer not only to questionable practices and transactions of the Niagara Falls Power Co., but to similar questionable practices of the Chelan Electric Co. of Washington, the operators of the Conowingo project in Maryland and Pennsylvania, and actions taken by the public service commission of Pennsylvania and the public service commission of Maryland. Discussing this we are told in this report thus made by the commission that—

> In a joint report filed with the three commissions—

That is, with the Public Service Commission of Pennsylvania, the Public Service Commission of Maryland, and the Federal Power Commission in connection with the Conowingo project.

> In a joint report filed with the three commissions on September 18, 1926, the committee reported that of a total of $7,246,832.07 appearing on the books of the various corporations as costs of the project, $3,090,253.14 appeared to be actual legitimate project costs, $3,443,708.35 appeared not to be a proper charge to the project, and the balance of $712,870.58 was doubtful and should be included in the project costs only if supported by affirmative evidence.

Mr. President, I read now from the testimony of Mr. Bonner concerning these matters of controversy, at page 92 of the hearings:

> One of the main objectives of the Federal water power act was to encourage and promote the development of legitimate water-power projects, and unless the administration may be conducted with fair consideration of the rights of those risking large sums of capital to harness the sites under control of the Government, it is certain that the development of such resources will cease altogether. With all the incidental public benefits resulting from water-power development, such as navigation improvement, flood control, and regulation for irrigation, it would be unfortunate indeed if the public-utility companies of the country through persecution are driven to abandon economical hydroelectric projects and employ steam generation exclusively.

I read now from a statement prepared by Mr. Bonner, probably reduced to writing—at least I assume it was—and read to the committee as a sort of justification for his attitude. Observe that the complaints were about the activities of Russell and King as being in the nature of "persecution" of the power companies and calculated to arrest entirely the development of our great water-power sites of the country.

> The cost-determination work of the commission is another subject which has furnished the basis for no small amount of misrepresentation. The act reserves to the Government the right to recover, if it chooses, the licensed water-power sites at the end of 50 years upon payment of the depreciated investment in the project works plus severance damages and providing such amount is not in excess of fair value. With this possibility in view, the law authorizes the commission to require licensees to file statements of their investments. This phase of the commission's work has been allowed to get somewhat in arrears and, upon complaints that this was due to lack of personnel, Congress authorized a substantial increase in the force for such work in the appropriations for the current fiscal year. Some cases present special difficulties which warrant a limited staff of headquarters experts, but the major part of the accumulation of overdue accounting work seems to have resulted from some disregard of the requirements and intent of the law by those directing the accounting work. As pointed out heretofore, the statute contemplates that the work of the commission shall be performed by and through the technical staffs of the departments. The investigation of applications, administration of licenses, and all other features, except accounting, have been very successfully handled in such manner. By peculiar reasoning the accounting activity was withheld from such program, and agitation started for a large headquarters staff.

Now:

> There is some suspicion that the work was purposely allowed to fall behind in order to provide basis for demands on Congress for increased appropriations.

The intimation being clearly made here, Mr. President, is that Mr. King had purposely delayed the work of his department so that he might, upon that foundation, appeal to Congress for an increased personnel.

The witness continues:

> In any event, when I was assigned to the commission a short time ago with instructions to break up the stagnation of the accounting division—

It would be interesting to know, Mr. President—the record does not disclose—who it was who gave him the instructions "to break up the stagnation" in the accounting work.

> I found a disposition to magnify the difficulties of the work and to delay matters until demands could be made for still larger appropriations. When this was met with tentative arrangements to enlist the aid of experts in the departments in furthering the work, we began to get a little action and less inclination to engage in aimless wanderings and dissipation of effort in blind alleys trying to find means to crowd into the fields of activity already covered by the State regulatory commissions. Investigation has developed that a large part of this cost-determination work may be absorbed by the departments,

and through their familiarity with the field conditions and construction operations the result will be more trustworthy than audits of stale voucher records by an accountant sent out from Washington. Naturally, this disturbs some personal ambitions and the plan encounters opposition in the accounting division. It is this fact which has given rise to newspaper propaganda and some of the testimony before this committee. There has been too much inclination to exaggerate the importance and the difficulties of the work by picking out for publication purposes isolated instances of fancied padding of accounts and trying the case in the newspapers before the licensees have been given a hearing and an unbiased decision made by the commission on the basis of complete evidence and proper interpretation of the law. Doubtless, some disallowances will be made and doubtless some questions will not be settled without extensive review by the courts.

The CHAIRMAN. I notice in this report which was made to the Congress in relation to H. R. 8141 and S. 1606, introduced in December, 1927, the following appears:

"With these many cases and these hundreds of millions of dollars involved, it is ridiculous to assume that the commission with only four accountants can make any real headway and enforce the law or can protect the public interest."

That seems to be in contradiction of the statement you have just made, does it not?

Mr. BONNER. In regard to the possibility of getting help from the departments, do you mean?

The CHAIRMAN. In regard to having adequate facilities for doing the work of the commission.

Mr. BONNER. We have been making an investigation of just how much of this work can be done by the departments, and we find that a good part of it may be so done. I want to make this clear, that these accounts do not represent all the so-called holding company fees, promotion fees, and all that sort of thing. My judgment would be that not less than 80 per cent of all these construction accounts are clear-cut field expenditures for construction work which has undoubtedly been performed and are not subject to question. Perhaps as a maximum not over 20 per cent might be in the shape of promotion fees, and for legal work done, and for general overhead work, for financing costs, regarding which there may be some room for different interpretation under the act and as to the validity of the charge made for such items. And, of course, such will be questioned when proper. I should not want to venture an opinion now as to how much of the 20 per cent might be found not allowable in the investment accounts.

The CHAIRMAN. When you say these construction costs may have been legitimate, do you assume that they have been legitimate, or do you take into consideration the organization of construction companies owned by the same companies that have the licenses?

Mr. BONNER. Yes, sir; we take all of that into consideration.

The CHAIRMAN. And also the interrelated profits between one company and another?

Mr. BONNER. Yes, sir. And any part of that account that might be in doubt would be certainly included in the 20 per cent I have in mind.

* * * * * * *

Senator GLENN. We had a specific case here yesterday in which it appeared that about one-half, or 50 per cent, of the cost of the project was in overhead and construction company expense and financing expense. I have forgotten the name of the company. Do you recall, Mr. Chairman?

I might say in this connection, Mr. President, that practically every member of the committee participated in the inquiry and interrogated Mr. Bonner, particularly evincing their disagreement with the views expressed by him which I have just read.

Senator WHEELER. That was the Dixie Construction Co., I believe.

Senator GLENN. Do you recall that case, Mr. Bonner?

Mr. BONNER. I am not familiar with that case.

Senator WHEELER. That was the Alabama Power Co., I believe, and not the Dixie Construction Co.

The CHAIRMAN. No; it was a case up in Pennsylvania.

Mr. BONNER. I know that there has been no such case tried as yet.

Senator HASTINGS. As I recall it has not been brought to the attention of the commission as yet.

The CHAIRMAN. That is true. It was H. D. Walbridge & Co., or something of that kind, was it not, Mr. Green?

Mr. GREEN. Yes, sir; some name like that.

Senator WHEELER. It was an application that is pending before the Federal Power Commission.

Mr. BONNER. Oh! And this was a prelicense expense claim?

Senator WHEELER. Yes.

Mr. BONNER. It might very readily happen that 50 per cent of the amount included in a prelicense expense claim would be subject to question, but that prelicense expense claim is ordinarily a very small part of the final cost, very obviously.

Senator WHEELER. Of course.

Senator GLENN. For instance, as I recall the testimony, and here is something about it:

"The CHAIRMAN. I remember Mr. Russell saying something on yesterday about $700,000. What case was that?

"Mr. KING. That $700,000 was in a somewhat different category. I think what Mr. Russell referred to were some payments, or rather some charges, by the Clarion River Power Co. to the plant investment account of a project up in Pennsylvania on the Clarion River."

And then the discussion continued and Mr. King said this:

"Here are some items that the bankers proposed to charge to the investment in that project:

"'Services securing contract with General Construction Corporation for construction of plants, $200,000.'

"The Walbridge Co. controlled that General Construction Corporation. And these are all charges made by these bankers:

"'Services securing contract with Penn Public Service Corporation to purchase output of plant, $200,000.'"

Now, it appears that this Penn Public Service Corporation was a subsidiary of the other company. In other words, they were charging one of their companies $200,000 for securing a contract with themselves. Do you know anything about that?

Mr. BONNER. I am not aware of the details of that case, Senator. But I want to say this, that any observations by members of the staff of the Federal Power Commission as to that particular case are quite premature at this time, because that company has not even filed a sworn statement of its costs that is to be claimed in that project as yet. I think that was based upon some preliminary statement that might have been offered, and a personal interpretation of that statement, without any hearing or any evidence of the company's side being produced.

Senator GLENN. What has been your general attitude upon charges of that kind, where one corporation makes a charge for securing a contract with another corporation, both controlled by the same people?

Mr. BONNER. That will be entirely a matter to be settled in a legal way.

Mr. Bonner does not appear to have any views at all about that.

Senator GLENN. I know; but the question I am asking is this: What has been your general attitude about it, upon charges of that kind?

Mr. BONNER. It has not been up to me to assume any attitude, because we have not had a case up for issue involving such a matter.

Senator GLENN. You have never had a case of that kind?

Mr. BONNER. No, sir.

Senator GLENN. Not before the Federal Power Commission since you have been with it?

Mr. BONNER. I think there are now four cases that have been reported by the accounting department for certain disallowances, and I think some of the proposed disallowances involve matters of that kind. I pass those on out to the company proposing the disallowances, and upon receiving their protest we set them down for hearing, and we will get the facts, and those facts will determine what we will do.

Senator GLENN. I have no doubt you will get the facts. But what will you do when you get the facts? If you have a case of this kind, what will you do?

Mr. BONNER. We have not had a case of that kind. All of the cases that have been settled have been settled by agreement.

Senator PINE. How about the Clarion River Power Co.?

Mr. BONNER. That project has been built.

Senator PINE. Don't you think that is the time to determine these matters while the application for license is pending?

Mr. BONNER. I think the time certainly to get information about costs is while the construction is going on, and not depend upon going back to some paper record after the thing has been completed.

Senator PINE. Those are preconstruction costs, as I understand it.

Senator HASTINGS. Some of them are.

Senator GLENN. I should like to call attention to two or three other items here. It goes on to say:

"That Penn Public Service Corporation was controlled by the Walbridge people. This local company further agreed to take the output of this project upon the representations of the Walbridge Co., and for that service H. D. Walbridge & Co. charged $300,000."

Now, that makes $500,000. There is $300,000 for again persuading themselves. But I continue reading:

"The CHAIRMAN. In other words, that $300,000 was simply for getting them to sign the contract to take the output?

"Mr. KING. Yes, sir.

"Senator HASTINGS. And was a corporation which they controlled?

"Mr. KING. Yes, sir.

"Senator GLENN. Then, as a matter of fact, they persuaded themselves to do it?

"Mr. KING. Yes, sir:

"To guarantee payment of principal and interest of Clarion River Power Co.'s bonds, $200,000."

So they charged $200,000, and this is the third charge, for guaranteeing bonds of another one of their companies that they controlled. And then, although this makes $700,000, that is not all:

"Expense in connection with issuance of securities by Clarion River Power Co. and familiarizing local investors with the market for the Clarion River development, $294,102.80."

And then there is this further charge:

"Total charges by H. D. Walbridge & Co. for services and expenses, $2,214,000."

Now, has your organization, or have you personally, any attitude upon charges of this character?

Mr. BONNER. Yes, sir.

Senator GLENN. What is it?

Mr. BONNER. Simply to determine them upon the basis of the facts and the law.

Senator GLENN. But that does not mean anything.

Mr. BONNER. Well, it means that everybody will get justice.

Senator GLENN. Do you think that these charges are justified?

Mr. BONNER. I would want to know the facts.

Senator GLENN. But I am asking you to assume for the purpose of my question that these facts are substantiated. Would you approve such charges as these as charges upon which the public must pay a return?

Mr. BONNER. Well, Senator, you understand that in these accounts we have nothing to do with rate of return.

Senator GLENN. Well, I know that they do affect the rate of return if they go into the construction cost.

Senator DILL. Mr. Bonner, why not answer Senator Glenn's question, assuming to be true these facts as stated here, would you favor allowing them?

Mr. BONNER. I would not want to give a curbstone opinion on that.

Senator GLENN. This is not asking for a curbstone opinion.

Mr. BONNER. I think it is.

Senator GLENN. This is a body of the Senate of the United States, and you are here before us on oath. You are not on a curbstone now.

Mr. BONNER. Of course, I do not know the facts.

Senator GLENN. But I say, assuming these to be the facts as they are presented here.

Mr. BONNER. You want me to assume these to be facts?

Senator GLENN. Yes; I want you to assume that these are the facts as stated here, then do you approve a charge such as this? Do you understand my question?

Mr. BONNER. I am not sure that I understand what your issue is now. Do you mean as to whether the board might properly allow as net investment charges made by one company to its subsidiary, simply a paper charge on the books between the two companies?

Senator GLENN. Yes.

Mr. BONNER. That certainly could not be allowed as a proper charge on investment.

Finally Senator GLENN has obtained an answer.

Senator HASTINGS. In other words, that these two companies, both controlled by the same people, are in the position that one makes a charge of $200,000 for getting the other to enter into some sort of agreement whereby no responsibility is involved, you would not allow that charge of $200,000?

Mr. BONNER. No, sir; certainly not, if there is no service or value rendered.

Senator GLENN. There may be some service, or claim of service, but here are the facts: Here is one organization controlling a lot of subsidiaries, and they get one of their subsidiaries to contract with another and charge a couple of hundred thousand dollars, and they get another subsidiary to guarantee some bonds of one of their companies; you have had enough experience to know generally the nature of such charges, have you not?

Mr. BONNER. We have seen a lot of them, and sometimes the contentions of one side are right and sometimes the contentions of the other side are right.

In the same way, Mr. President, the witness, Mr. Bonner, fenced with questions addressed to him as to who recommended him for the position of executive secretary of the commission. The matter is of no great importance except to show that in exactly the same way, the witness, Mr. Bonner, endeavored to evade the questions which were addressed to him by the committee.

Senator WHEELER. Mr. Russell testified here the other day before the committee, and I think the committee is interested in it, to the effect that just prior to the time when he had been selected as attorney, or just after he had been selected but before he got his commission, that you called him over to the Federal Power Commission and told him that you wanted him to get in touch with or to meet some of the representatives of Electric Bond & Share. What about that?

Senator DILL. Or he said power companies.

Senator WHEELER. Yes. Do you remember that?

Mr. BONNER. I think it was something along this line, Senator——

Senator WHEELER (interposing). Well, can you answer that question? Did you call Mr. Russell over there and tell him that you wanted him to meet with the representatives of the power companies?

Mr. BONNER. Mr. Russell was spending more or less time over at the office of the Federal Power Commission prior to his actual detail there, and I think possibly I might have asked him to come over a time or two when we had something to discuss over there.

It will be observed that this was no answer at all to the question addressed to him.

Senator WHEELER. We want to get the facts and to know what is the truth about that matter. That is the only interest I have. I am not asking these questions except in so far as the committee wants to know what the facts are.

Mr. BONNER. I understand.

Senator WHEELER. Now, Mr. Russell's testimony, as I recall it, was to the effect that after he came over there he met Mr. Leighton, who represents Electric Bond & Share, he said, and other power interests; is that correct?

Mr. BONNER. Mr. Leighton does handle a lot of the work for Electric Bond & Share in so far as their contracts with the Federal Power Commission are concerned.

Senator WHEELER. And that in your presence Mr. Leighton then started in to say to Mr. Russell, in substance, that he wanted Russell to tell Mr. King how he should handle the accounting department?

Mr. BONNER. I do not recall that Mr. Leighton ever said anything of the kind. As I recall, Mr. Leighton came to see me some time within a couple of weeks, perhaps, before I was definitely assigned to the position I am now in and made some complaints about the cumbersome accounting methods of the Federal Power Commission and the considerable cost that they were placing on the companies on account of aimless consideration of matters. He said that they would first ask for one thing and when the companies at more or less expense and trouble would get it up and furnish it, they would then ask for another thing, and the companies would have to spend a lot of money and get that up, and then it would not be used. And, as I recall it, I told Mr. Leighton that this new attorney would be largely in charge of that work, and that he should pass on his complaints to him, which, as I recall, was done.

Senator PINE. But what we want to know is this: What did Mr. Leighton say to Mr. Russell in your presence?

Mr. BONNER. As near as I can recall, all that Mr. Leighton did say was to outline some of the troubles that he had had in the past in getting intelligent action by the Federal Power Commission in regard to requests or instructions, to get them to tell exactly what they wanted, and not to get trouble-making requests for information that was not wanted or not needed; and he was complaining about the auditing being too meticulous, that they had been wasting time going into minor details that did not result in anything at all.

Senator PINE. And did you agree with Mr. Leighton that the auditing department of the Federal Power Commission had been too meticulous?

Mr. BONNER. I do; yes, sir.

Senator WHEELER. You feel that Mr. King has been entirely too meticulous in checking up these accounts of the power companies?

Mr. BONNER. In certain projects that have come to my attention in the reports of the auditors they have gone too much into detail. And we have issued to Mr. King instructions to try to cut the corners on a lot of that kind of work.

Senator WHEELER. Now, what particular projects have you in mind?

Mr. BONNER. Well, I have one that just came to my attention yesterday. It is a project which uses a Government dam down on the Kentucky River in Kentucky. It is rather a small project and rather a low dam, and I think the total investment in the project is something like $530,000. The auditor went down there and spent a lot of time going over the books, and finally came back with a recommendation something to this effect: One thing that he found was that there was a truck——

Senator DILL (interposing). What was that?

Mr. BONNER. An automobile truck that was on the job when licensed. And the price of the license tag, amounting to about $16, was charged against that particular project, whereas the truck was only on the project three months, I believe he said, and then was moved away to another project. The auditor recommended that the proportionate time which the truck had not been used on that project should not be allowed. In other words, that the price of the license tag should only be $4 as charged to this job instead of $16.

Then there was another item of that kind, about two engineers or construction superintendents, and I forget which, who were brought down from some project in Wisconsin at a total cost of about $47. The auditor took the position and recommended that the item be decreased in the amount that it would have cost to get these men to headquarters from the jobs that they were on; in other words, that the charge from the job they were taken from to Chicago should be charged to that job, and only a charge from Chicago to the Kentucky job be charged to that Kentucky project. There was another item of the same kind where the auditor recommended a disallowance of $4.50 on account of the fact that there had been a mirror purchased for the job, and it came broken, and in getting it replaced it was charged again. The auditor recommended that the account be reduced by that amount of $4.50. I told Mr. King that in spending our time going down to that detail on a lot of these jobs was wasting public money.

That indicates something about the nature of the attitude this witness took toward that matter. But these subjects engaged the attention of the Senator from New Jersey [Mr. KEAN], a member of the committee. I read from page 122, interrupting Mr. Bonner:

Now, the next thing, about sending your auditors out. You send them out to audit the accounts of these companies, and

they may only find, as you have illustrated in one case, that an automobile license was charged at $16 and that they only ought to have charged $4. But the auditor must go through the books from beginning to end and get the balances, so that all these little things ought to show up. Therefore, if he reports on these things, that is not a waste of time. That merely shows that he has made a thorough examination of those books; isn't that true?

Mr. BONNER. Yes, sir.

Senator WHEELER. But the thing you are objecting to, you want them to take some short cuts and skip over it?

Mr. BONNER. To go ahead with it.

Senator KEAN. And that would not be a full and complete audit of the books.

Mr. BONNER. It would be sufficient to determine in general the good faith of the accounts, and would come pretty close to determining what was the proper amount to be allowed in the capital account.

The Senator from Montana comes back to the Pennsylvania matter:

Senator WHEELER. Now, as to the project up in Pennsylvania that Senator GLENN called your attention to: Mr. King prepared the figures on that project, did he not? He went over that and made certain recommendations in reference to it.

Again, at page 107:

Senator WAGNER. In the course of your statement you stated that there was danger of retarding progress of these water-power companies, if I understood you correctly, because of governmental persecution. You must have had in mind some very definite acts of persecution. Can you relate to us now the kind of persecution which the Government has been guilty of against these water-power utilities?

Mr. BONNER. I did not say "governmental persecution," Senator.

Senator WHEELER. But you said persecution.

Mr. BONNER. Yes, sir.

Senator WAGNER. All right. What has been the nature of that persecution?

Mr. BONNER. Well, it is just that any hydroelectric project that is started now seems to get into endless controversy; that is so discouraging to the people promoting it that they are beginning to think what is the use.

Senator WAGNER. What particular companies have you in mind? Had you in mind the instance of the Insull companies?

Mr. BONNER. No; I do not know much about that Insull Co.

Senator WAGNER. What companies have been persecuted?

Mr. BONNER. Well, I think that a lot of this newspaper publicity that has been handed out in regard to the Niagara Falls Power Co. borders on persecution. The company has complained and they seem to feel it severely, and they have asked the commission to give them a hearing at the earliest possible time. I think the same is true of the Alabama Power Co. and some others.

Senator WAGNER. Well, what particular persecution has the Niagara Falls Power Co. been subjected to?

Mr. BONNER. All these irresponsible newspaper statements, made in regard to the so-called padding of their investment account at Niagara Falls.

Senator WAGNER. Well, while we are on that subject I will say that I understand they deny that there was any of this padding that has been stated before the committee. May I ask you if you know anything about the assets of the Niagara Falls Power Co.? Have you ascertained them for the purpose of issuing a permit to them to operate?

Mr. BONNER. No, sir.

Senator WAGNER. Well, isn't that a prerequisite?

Mr. BONNER. No, sir.

Senator WAGNER. When was the license issued to the company?

Mr. BONNER. I think about 1921, or possibly early in 1922.

Senator WAGNER. Before that license was issued was there a valuation of their property?

Mr. BONNER. No, sir; not by the commission. It has not been done yet.

Senator WAGNER. Is not the Federal Power Commission required to do that?

Mr. BONNER. Not before a license is issued; no, sir.

Senator WAGNER. Well, at any time thereafter?

Mr. BONNER. Yes, sir. And that is what the question is about now, and what the company wants to have the hearing before the commission about, to settle about that valuation.

Senator WAGNER. How long has this valuation been going on of their properties?

Mr. BONNER. Well, I do not think it has been started yet. As I understand it, and I am not very familiar with that case, for as you understand that is here in the East and my work has been mostly in the West, and all I know about this development has been gained since I have been here. I have been trying to find some means of stirring up action on the Niagara Falls case.

It will be borne in mind, Mr. President, that Mr. Russell told us that he went to Mr. Bonner to request him to make a demand upon the Niagara Falls Power Co. and its subsidiary companies to permit an examination of the books, and Mr. Bonner refused to issue the demand for permission to look at the books.

I understand they started at one time to make a valuation and then held back on it. It seemed that the War Department engineers were going to make it, and there was some reason, on account of the complexity of the proposition and some very involved legal questions, that it was put off in favor of going ahead with work more susceptible of progress.

The CHAIRMAN. When was it that the first criticism appeared in the press concerning the alleged charges that the Niagara Falls Power Co. had made about padding their accounts?

Mr. BONNER. I think along in December the Niagara Falls Power Co. filed a protest with the commission and implied that the criticism and the press material was coming out of the commission's office, and they demanded an immediate hearing in order to clear up the reflections thereby made on their integrity.

Senator WAGNER. Was there any press information coming out of the commission's office alleging a padding of accounts by the Niagara Falls Power Co.?

Mr. BONNER. It certainly was not given out officially.

Senator WAGNER. But was any coming out at all?

Mr. BONNER. I think it originated in the commission's office.

Senator WAGNER. With whom?

Mr. BONNER. Well, I imagine that Mr. Russell or Mr. King can tell you more about that. We have not been able to find out. It has been denied by everybody in the office.

Senator WHEELER. Is there any reason why these records that are filed, these prelicense costs, should not be made public?

Mr. BONNER. Absolutely not.

Senator WHEELER. Well, then, if they were made public and they were published, how could there be any persecution if they just published the facts?

Mr. BONNER. Oh, it was the interpretation put on those claims, and not the claims themselves.

Senator WHEELER. Then, as I understand it, if Senator WAGNER will pardon me, what you are contending is that the persecution has been by the newspapers who made the claim by having misinterpreted the claim; is that it?

Mr. BONNER. That may be, or a part of it.

Senator WAGNER. In what way have these newspaper articles retarded the progress of the Niagara Falls Power Co.?

Mr. BONNER. I do not know that they have retarded their progress any. It is just a case of the company being insistent now that the commission shall go ahead and do something quickly, so that they will not be subject to future attacks of that kind, and to get the question settled.

Senator WAGNER. I understood you to say that one of the things you were very apprehensive about was that this persecution the public utilities were subjected to would retard development of water power. That is what I am trying to have you support, if you can, by facts. You must undoubtedly have had in mind, when you gave us that conclusion, some facts upon which to base it. Now, are there any other facts as to persecution that you have in mind, in addition to the newspaper articles?

Mr. BONNER. Yes; I think there are. I could get you up quite a statement on that.

The CHAIRMAN. I can not hear the witness. He does not speak up loud enough so that all the members of the committee can hear.

Mr. BONNER. I am sorry, Senator.

Senator WAGNER. Can you tell us offhand now?

Mr. BONNER. I would not want to say it offhand now.

Senator WAGNER. But you did make that general statement, did you not?

Mr. BONNER. Yes, sir.

Senator WAGNER. Didn't you expect somebody would inquire about the specific things you had in mind, in what way that persecution has taken place?

Mr. BONNER. It can be backed up.

Senator WAGNER. Aren't you prepared to back it up now?

Mr. BONNER. Well, what more do you want, other than the instances I have cited as samples?

Senator WAGNER. You have stated that these attacks have retarded progress of water-power development. Now, so far as the Niagara Falls Power Co. is concerned, it is just this one incident you referred to which you know has not retarded the progress of that company. It is in very good financial condition so far as I know, and has not stopped operating. Is there any other company that you have in mind which has been subjected to persecution? I do not want to continue this inquiry if you say you are not prepared to answer.

Mr. BONNER. Yes; I think so. I had a conversation not long ago with the commission's representative out in Utah in connection with the accounting that is going on there. He said it was pretty discouraging to the company and that he thought out in that country if things were going to continue as they are that these attacks on power companies would mean that they would probably go to steam rather than water power out there. The same thing is true in Alabama and in Georgia. I have had statements made to me that down there the persecution they suffer in regard to water-power development is going to cause them to prefer steam to water power.

I read, in conclusion, from pages 116 and 117 of the testimony, as follows:

Senator DILL. I want to call attention to a letter of October 9 written to you by Mr. King calling attention to the long delay in the valuation of the Niagara Falls project, and your reply of October 29, in which you say that you think that matter should be postponed still further. You say that "I was under the impression we had already agreed the best course would be to defer action in this case for a time."

And, as you point out, it is one of the most complicated cases pending; that the procedure is going to be complicated; and you say under the circumstances it seems important to give priority to other cases less involved. What other cases are more important?

Mr. BONNER. I think there are many that are fully as important.

Senator DILL. Is there any other case where they claim a $30,000,000 valuation for the use of water?

Mr. BONNER. No; I do not think there is.

Senator DILL. Isn't it extremely important that that question be decided at an early date so that we may have a basis for valuation?

Mr. BONNER. There is a lot of work pending. My idea is that we should get into the jobs that we can make progress on, and that one as complicated as Niagara can just as well be let go until we can get some principles established.

Senator DILL. Isn't it the very place to establish the principles?

Mr. BONNER. No. That won't establish any principles at all. That Niagara Falls case is completely different from practically any other case.

* * * * * * *

Senator WAGNER. But it is the use of the water that is the valuable thing. That is what generates electricity. But we will not go into that. You state that another one of the things which has retarded progress of public utilities is this—the talk of "fancied padding." Will you tell me what you mean by that?

Mr. BONNER. This premature decision as to whether the accounts have been padded or not. I claim, Senator, that you can not tell and that it is not fair to anybody to claim there are padded accounts until you get all the evidence in and have that evidence considered and make some fair decision.

Senator WAGNER. That is true. Is that what you mean by fancied padding?

Mr. BONNER. Yes.

Mr. President, I think this testimony clearly discloses, as stated by the Senator from New Jersey, that the action of Messrs. King and Russell was exactly such as the Congress of the United States expected from them, and that the attitude of Mr. Bonner was distinctly contrary to the public interest.

Mr. President, as a conclusion to my remarks I desire to submit and ask that there be incorporated in the RECORD certain tables containing information of value in connection with the general subject. These were prepared by Miss Ruth Finney. I assume no responsibility for their accuracy, although I believe them to be accurate.

The first is a list of the companies whose accounts have been questioned, and the aggregate amount of the items questioned, the aggregate of the whole, as stated by me yesterday, being $110,182,280.

The next table is a list of typical items questioned by the accounting division, which is, in a way, a summary of a report which will be found in the hearings of the committee, volume 2, commencing at page 170.

The next is a statement of the New River case, which has had some attention from the press.

The next is a tabulation entitled "Centralization of Power," showing the percentage of the total electrical power controlled by the larger combinations.

The next is entitled "Extent of Movement of Interstate Power," showing that the amount of power transferred from one State to another is constantly increasing.

The next is something of the story of the Electric Bond & Share Co.

The next is entitled "Connection of Electric Bond & Share and General Electric."

The next is something of the story of the American Gas & Electric Co.

The next has some reference to the commission's investigation.

I ask that these tables be incorporated in the RECORD.

The VICE PRESIDENT. Is there objection?

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

Summary of Federal Power Commission project accounts questioned by William V. King

(Taken from pt. 2 of hearings before Committee on Interstate Commerce, United States Senate, 71st Cong., 2d sess., Investigation of Federal Regulation of Power. Table on p. 169)

Company:	Amount questioned
Alabama Power Co	$4,415,033
Carolina Power & Light	522,919
Chelan Electric Co	852,167
Clarion River Power (later increased to $6,387,000)	5,259,736
Columbus Electric & Power Co	646,040
Cumberland Hydro-Electric Power Co	500,000
Empire District Electric Co	82,319
Lexington Water Power	456,007
Minnesota Power & Light	769,105
Niagara Falls Power Co. (figures not in summary but in memorandum following; Power Commission not been able to examine books)	[1] 84,500,000
Northern Connecticut Power Co	1,050,000
Northern States Power Co	No estimate.
Northwestern Power & Light	108,025
Pacific Gas & Electric	562,238
Pennsylvania Power & Light	759,413
Rocky Mountain Power	65,088
Savannah River Electric Co	143,922
Susquehanna Power Co	4,156,578
Union Electric Light & Power Co	379,402
Washington Irrigation & Development Co	4,954,289
Total	110,182,280

Typical items questioned by the Accounting Division

Alabama Power Co. (p. 170, pt. 2, same hearings):

Payments to J. T. Newcomb (lobbyist)	$21,731
Payments to Henry J. Pierce (lobbyist) for services at Washington during pendency of Federal water-power legislation	7,000
Traveling expenses of officers and employees of power company to Washington and other eastern points	17,000

Chelan Electric Co. (p. 75, pt. 1, same hearings):

"The company claims an allowance for interest paid during the prelicense period, totaling $859,000. This is 78 per cent of the total claimed to have been actually paid for all the properties purchased by or for Chelan Electric Co. up to the date of the license. No evidence has been presented to show that $516,000 of additional interest has been paid or is intended to be paid."

Susquehanna Power Co., Conowingo project (p. 76, pt. 1, same hearings):

"Four companies in Maryland and Pennsylvania involved. They claimed $9,000,000 for prelicense costs. Public Service Commissions of Pennsylvania and Maryland and the Federal Power Commission have worked jointly in examining accounts. They found $7,246,832 appearing on books as costs and reported that only $3,090,253 of this appeared to be actual legitimate cost."

Clarion River Power Co. (p. 77, pt. 1, same hearings):

"Company claims expenditure of $11,032,816. In this memorandum Accountant King questioned items totaling $5,259,736. Later, in a final report made to the Power Commission in August, 1930, King questioned items totaling $6,387,000. In this report he called attention to expenditure of $144 for $3 'scarves,' supposedly neckties, purchased at Vantine's, in New York, and given to the company's guests at the party it gave to celebrate opening of the Piney project, in Pennsylvania.

"Other notable items questioned.

"The company was controlled, during time of construction, by H. D. Walbridge Co., New York bankers. This company also owned the Penn Public Service Corporation, a utility company; a real estate company, and the General Construction Co."

Memorandum prepared by King, page 77, says:

"The expenditures on actual construction work appear to be approximately $4,360,000. To this is added a supervision fee of $400,000 paid to an engineering firm employed by General Construction Co.; reservoir lands, $153,000; interest, $754,000, and other miscellaneous items, making a total of $5,773,000. To this amount which probably represents the maximum of actual legitimate construction costs is added $451,000 par value of stock issued to J. R. Paull for promotion and for preliminary investigations; $2,214,000 par value of stock issued to H. D. Walbridge Co. for services, and $2,595,000 to General Construction Corporation for services and expenses.

"Of the total charged for 'services' of H. D. Walbridge Co., $1,119,000 is for engineering services and exploration work, a part in connection with two other projected developments, $200,000 is a fee for securing a contract with General Construction Corporation which Walbridge & Co. controlled, $300,000 is a fee for securing from Penn Public Service Corporation, which Walbridge & Co. controlled, a contract to purchase the output of the plant when constructed, $200,000 is a fee for securing a contract with the same company to guarantee payment of principal and interest on Clarion River Power Co.'s bonds, and $294,000 is for expenses in connection with issuance of securities."

Niagara Falls Power Co. (details on p. 71, vol. 1, same hearings, and on pp. 175 to 179, pt. 2, same hearings):

[1] Approximate.

"The commission has never been allowed to examine the company's books, and as a result the accounting division has not been able to secure adequate information about questionable charges. It was the Niagara Falls Power Co. which brought pressure to bear to have deleted certain pages discussing its company from the report King prepared for submission to the House Committee on Interstate and Foreign Commerce, when attempt was made to secure more accountants. O. C. Merrill testified (p. 276, pt. 2, same hearings) that he gave an advance copy of this memorandum to Paul Wooten of the McGraw-Hill Co. (newspaper man) who allowed it to fall accidentally into the hands of an official of his company, who told the Niagara Falls Power Co. what it contained. The sections pertaining to this company and to Clarion River, and several other companies, were deleted at that time, but were presented to the Senate committee at the hearings from which I am quoting, in February, 1930.

Cumberland Hydroelectric Power Co. (p. 173, pt. 2, same hearings):

"Items questioned total $500,000.

"Half of this is the obligation of Cumberland River Power Co. to advance moneys to the Kentucky State Park Commission for purchase of lands at Cumberland Falls for park purposes. Considered a proper cost if and to the extent paid in the future.

"The remainder is the obligation of the company to issue stock to Middle West Utilities Co. and Cumberland Hydroelectric Power Co., 30,000 shares. This appears to be an arbitrary promotion fee for alleged services of promoters and officers of Middle West Utilities Co."

Lexington Water Power Co. (p. 174, pt. 2):

"Items questioned total $456,007. They include an arbitrary payment of $150,000 to W. S. Barstow & Co. for services and an arbitrary payment to Murray and Flood for services, also of $150,000.

"W. S. Murray is the intimate friend of George Otis Smith, and has been for years. It was Murray and Flood who made the unfavorable report on Ontario power, which was financed by power companies, the Trade Commission found. Murray was also selected by George Otis Smith to make his superpower survey between Boston and Washington."

Minnesota Power & Light (pp. 174 and 175, pt. 2):

"Items questioned total $769,114.

"This is an Electric Bond & Share company. Funds for construction were obtained from the sale of notes by Pike Rapids Power Co. (original name of licensee). These were all purchased by American Power & Light, a holding company which controlled the licensee, when some of them had been outstanding a very short time. Had the notes been outstanding for their entire term the interest at 7 per cent plus the discount of 10 per cent would have made the cost to the licensee for the construction funds approximately 9 per cent per annum. But it appears that the company paid American Power & Light 16½ per cent per annum for its funds. The total charge for interest and discount was $475,172, which is 15.97 per cent of the cost of the project. It would appear that the charge for discount was hardly justified.

"A construction fee of $92,289 was paid Phoenix Utility Co., which is also controlled by Electric Bond & Share. This fee is believed to represent largely, if not entirely, a profit to Electric Bond & Share not properly includable in the cost of the project."

NEW RIVER CASE

Overnight the book value of Appalachian Electric Power Co., the company which is seeking a "minor-part" license for this project, was written up 92 per cent and securities were issued on the basis of the increased valuation, according to Trade Commission testimony, in volume 22, utilities investigation, Asel R. Colbert, witness.

This company has already been exempted from regulation by the Virginia regulating commission. If the Power Commission grants its request for a minor-part license, it will be freed of all Federal regulation also. The chairman of the Virginia commission appeared before the new Federal power commissioners and asked them to reconsider the decision of the old board and issue a minor-part license on the day the Senate voted on the motion to reconsider confirmation of Smith, Garsaud, and Draper.

This is the company also in which Stanford University, of which Ray Lyman Wilbur is president, has a large stock investment.

Appalachian Electric Power was formed by a merger of three companies in 1926. Its common stock is all owned by American Gas & Electric Co., which has electric bond and share affiliations.

To obtain control American Gas & Electric bought the stock of three predecessor companies and then conveyed them through an intermediary to the new Appalachian Electric Power Co.

The cost to American Gas & Electric was $62,690,900. It bought them on March 30, 1926. On March 31, 1926, the book value of these three companies with their physical properties was carried by American Gas & Electric at $72,621,455.

On April 1, 1926, the next day, this same property was carried on the books of the Appalachian Electric Power Co., to which it had been transferred, in the amount of $139,039,648.

This was an increase of $66,418,192, or 92 per cent.

At once Appalachian Electric Power Co. issued and assumed funded debt amounting to $70,115,000. It had set aside $5,000,000 to apply on the debt, leaving a net funded debt of $65,115,000. That made the debt closely approximate the fixed capital of the company before the write up took place, the commission points out.

Among subsidiaries of the Appalachian Co. is Kentucky & West Virginia Power Co. This company reported to the Kentucky Tax Commission in March, 1926, that while its book amount of fixed capital was $14,546,067 the actual value was only $6,136,834, or only 42 per cent of the amount recorded.

The Trade Commission's examiner reported after examination of Appalachian Electric Power that "predecessor companies had at least $34,000,000 included in their fixed capital accounts as unclassified fixed capital."

"The companies have not permitted an examination which will show details," he said. It may be that at least a part of this unclassified fixed capital represents appreciation previously recorded on predecessor companies' accounts."

CENTRALIZATION OF POWER

(Table prepared by H. S. Raushenbush for the committee on coal and power)

Seventeen holding companies control 85 per cent of the Nation's power. The two biggest companies control 34 per cent of the total. The four biggest control 51 per cent of the total. The first two work together very closely and have some interconnection. Following is the list:

	Per cent
United Corporation	18.80
Electric Bond & Share	15.26
Insull	10.40
North American	7.13
Consolidated Gas	4.78
Standard Gas & Electric	4.51
Southern California Edison	3.00
Pacific Gas & Electric	2.89
Stone & Webster	2.82
Detroit Edison	2.66
Associated Gas & Electric	2.40
Duke Power	2.17
American Waterworks & Electric	2.15
Cities Service	1.77
Consolidated Gas-Penn Water	1.76
International Paper & Power	1.65
United Light & Power	1.50

Changes may have occurred in 1930.

EXTENT OF MOVEMENT OF INTERSTATE POWER

[From Federal Trade Commission report to the Senate, made January 5, 1931]

Total electricity generated in 1929, 94,703,518,938 kilowatt-hours.

Total electricity consumed in 1929, 80,955,774,769 kilowatt-hours.

Ratio of outward movement across State lines to energy generated was 15.18 per cent.

Ratio of inward movement across State lines to energy consumed was 19.64 per cent.

ELECTRIC BOND & SHARE

(Exhibit 4587, vols. 23–24)

All figures from Federal Trade Commission report on utility corporations, volumes 23 and 24 and volume 25.

The company's investments are more than $600,000,000.

The company controls four major holding companies, as follows: American Power & Light, National Power & Light, Electric Power & Light, American & Foreign Power Corporation. It is affiliated with the American Gas & Electric Co., giving it financial service.

The four major holding companies own and control 57 operating utilities in the United States, and 78 in foreign countries.

The American companies are located in 26 States. They serve 2,820 communities. The population reached by them is estimated at 8,766,000.

The foreign companies are located in 12 different countries.

While Electric Bond & Share insistently states that it does not own directly a majority of stock in the four major holding companies, the Trade Commission's report points out that "under modern conditions of widely scattered ownership of corporation securities, absolute ownership by one organization or individual of a majority of outstanding voting stock is not necessary for control."

An illustration

All of Carolina Power & Light's common stock is held by National Power & Light.

National Power & Light is controlled by 5,419,984 shares of common stock, of which 30.6 per cent is owned directly by Electric Bond & Share. However, individuals and corporations closely affiliated with Electric Bond & Share owned additional shares, so that practical control of National Power & Light by Electric Bond & Share interest was assured.

Electric Bond & Share exercises its principal control of the companies in its group through supervision contracts which it executes with the companies.

Through them it guides the financial, construction, and operating practices of those companies.

The officers of Electric Bond & Share serve as officers and directors of both the holding and operating companies in the group.

Of the 14 directors of Carolina Power & Light, in 1929, 6 were officers or directors of Electric Bond & Share, 2 were directors of the holding companies organized and managed by Electric Bond & Share, 1 was a director of General Electric; another of General Electric Employees' Securities Corporation; 1 apparently not directly affiliated with Electric Bond & Share; and 3 were resident officers of Carolina Power & Light.

Of the 12 officers of the company 6 were officers or employees of Electric Bond & Share living in New York, while 6 were resident in the community.

In addition to the practice of having directors of Electric Bond & Share among the directors and officers of the operating companies, certain experienced officers and employees are designated as sponsors for each company. One is a general sponsor with the experience and with a breadth of duties akin to a general manager. Usually there is also an engineering sponsor. Occasionally there is a sponsor charged with accounting responsibilities. These sponsors keep intimately in touch with their companies.

Sidney Z. Mitchell, who is chairman of the board of directors of Electric Bond & Share, is also chairman of the board of American Power & Light, National Power & Light, Electric Power & Light. He is a director in 22 companies, 7 of them outside the Electric Bond & Share group.

C. E. Groesbeck, president of Electric Bond & Share, is a director in 31 companies, including the 3 major holding companies. Of the 16 directors of Electric Bond & Share 14 are directors in other companies in the group. Nineteen officers of Electric Bond & Share also hold office in one or more other companies in the group.

Electric Bond & Share derived, in 1927, 50.6 per cent of its annual income from fees for services, supervision and general services, construction, engineering, and special services.

Reported gross annual earnings of companies from which fees were collected in 1927 were $211,727,406. The company limits its servicing to companies in which it has an investment interest.

In 1927 it made a profit on its servicing activities of 105.4 per cent. The construction fee, at least, the commission finds "is very largely a clear profit to Electric Bond & Share organization for its more or less valuable but intangible overhead relationship."

CONNECTION OF ELECTRIC BOND & SHARE AND GENERAL ELECTRIC

[From Exhibit 4681, p. 840, vol. 25, utilities investigation]

General Electric organized Electric Bond & Share in 1905 and controlled it 100 per cent until 1925.

On December 29, 1924, Senator NORRIS introduced a resolution for investigation of the relationship between the two companies, and on December 30, 1924, the board of directors of the General Electric voted to divest itself of its stock holdings in Electric Bond & Share.

The resolution was not passed until February, 1925, and it was not until then that the plans for divestment were carried out.

General Electric organized Electric Bond & Share Securities Corporation with the same number of shares as General Electric and exchanged its holdings in Electric Bond & Share for stock of Electric Bond & Share Securities Corporation. This latter stock is distributed among the stockholders of General Electric.

At the beginning identical stockholders controlled General Electric, Electric Bond & Share, and Electric Bond & Share Securities Corporation.

Twenty-one months later the Trade Commission found that:

"There were outstanding 7,210,872 shares of common stock of the General Electric Co. and 1,802,870 shares of Electric Bond & Share Securities Corporation. The totals held by stockholders having holdings in each company were 5,375,163 shares of General Electric stock and 1,421,956 shares of Electric Bond & Share Securities Corporation, or nearly 75 and 79 per cent, respectively. The 2,542 holders of common stock common to both companies having over a hundred shares each had 52.5 per cent of the total General Electric stock outstanding, while 1,743 such stockholders with holdings in excess of 150 shares each had 52.9 per cent of the outstanding common stock of the Electric Bond & Share Securities Corporation."

In 1929 Electric Bond & Share and Electric Bond & Share Securities Corporation merged to form the new Electric Bond & Share Co.

While the number of holders of common stock of Electric Bond & Share Securities Corporation was 25,725 in 1926, the number of common-stock holders of the new Electric Bond & Share Co. was 72,000 in April, 1930.

This fact, together with the fact that "it is well known that the common stock of both the Electric Bond & Share and General Electric are heavily traded in," the Trade Commission believes, "to have importance with respect to the question whether there have been substantial changes in the extent of identity of stockholders in these two companies, but in the absence of an actual comparison of the two lists of stockholders no certain inference can be made."

The commission points out also that the custom of having large blocks of stock held by brokers for their clients, and appearing only under the name of the broker, makes it impossible to tell the extent of this common ownership.

Eighteen of the 25 directors of Electric Bond & Share at the present time held office also when the company was controlled by General Electric, so the management has been more or less unbroken in policy.

The Trade Commission also calls attention to the fact that the articles of incorporation of Electric Bond & Share Securities and the new Electric Bond & Share Co. contain provisions authorizing these directors to assign any new issues of stock to anyone they see fit. It comments:

"The above provisions have important relation to corporation control that was possessed by a small number of directors, the stockholders notwithstanding, inasmuch as it provided that if the capital stock of the corporation ever were increased, the then existing stockholders could claim no right to subscribe to any share or shares of such additional capital stock, but that the increase thereof could have been distributed by action of the board of directors to whomsoever they themselves (the directors) decided. For this reason, if there had been an effort made by outside interests to acquire control of the Electric Bond & Share Securities Corporation, the board of directors could have issued such common stock to friendly interests as was necessary to maintain control. This provision, however, is not peculiar to the Electric Bond & Share group."

AMERICAN GAS & ELECTRIC CO.

[From Exhibits in vol. 22, utilities investigation (Federal Trade)]

This is a holding company with 17 subsidiaries in 9 States.

It is affiliated with Electric Bond & Share by reason of financial supervision contracts.

Its power lines have interconnections with the lines of the Insull, Doherty, United Gas Improvement, Byllesby, Philadelphia Electric, and other companies.

Ten officers of the American Gas & Electric, living in New York City, constitute a majority on the boards of directors of every American Gas & Electric subsidiary except four, and these four are almost as completely controlled.

Of 15 directors of American Gas & Electric, 7 are directors of one or more important companies in the Electric Bond & Share group.

In one of the American Gas & Electric companies a million-dollar investment now controls stocks valued at $375,000,000.

One hundred and thirty-five stockholders of American Gas & Electric now hold 60.47 per cent of the stock. The remaining 39.53 per cent is held by 12,000 owners.

In the past 13 years American Gas & Electric has made 280 per cent profit on fees charged for engineering, management, and financial service to its subsidiaries. In other words, 74 cents of every dollar charged for service was profit. (Testimony of John Bickley, Trade Commission examiner, p. 145, vol. 22.)

One subsidiary, Ohio Power Co., paid, in 1929, for engineering services, $316,392 more than the entire cost of furnishing this service to all 17 subsidiaries.

FEDERAL TRADE COMMISSION INVESTIGATION

In addition to showing the extent and control of utility holding companies and their subsidiaries, the Federal Trade Commission investigation has revealed the following two major abuses:

First, appreciation, or "write-ups" in stock values. In many cases the companies manage to make these inflated values the basis for security issues and rate returns, but not for taxation.

Appreciations so far disclosed total, in the testimony so far printed, $324,000,000. Other write-ups have been testified to in exhibits now available at the commission but not readily accessible in printed form.

The $324,000,000 is divided as follows:

American Gas & Electric	$88,492,000
American Power & Light	74,000,000
Electric Power & Light	70,103,600
National Power & Light	46,810,000
Carolina power and light group	22,414,000
Minnesota power and light group	22,071,000

The second major abuse disclosed is the pyramiding of holding companies to transfer profits rapidly from one company to another and from one State to another, thus defeating regulation. The profits are transferred in the form of fees for servicing, management, construction, engineering, and financial advice.

Southeastern Power & Light furnishes striking examples of both these abuses. Testimony on this company has not yet been printed.

Southeastern Power & Light has been recently merged with Commonwealth & Southern, a corporation in which both Electric Bond & Share and the United Corporation (Morgan company) hold stock. It controls a group of operating utilities in the South.

Robert J. Ryder, trade commission examiner, has testified that the rate of return on utility companies in the group was low. For instance, South Carolina Power Co. yielded 4.56 per cent in 1927 on Southeastern's investment in it, 4.5 per cent in 1928, and 6.27 per cent in 1929.

However, Dixie Construction Co., also controlled by Southeastern, showed the following profits: On a net investment of $750,000 it realized a return of 93.3 per cent in 1925, 65 per cent in 1926, 66 per cent in 1927, 80 per cent in 1928, and 33 per cent in 1929.

Ryder said: "While these dividends have been realized by the Southeastern Power & Light from one of its nonutility companies, in effect they have been received from the operating subsidiaries as the major portion of the revenues of Dixie Construction Co. is received by that company for construction work it performs for operating companies."

Southeastern charged all its subsidiaries a fee for supervising them and managing them between 1925 and 1927. Of the net profit it derived from these fees $30,017 were derived from utility companies, while $1,837,839 were derived from unregulated non-

utility companies, though, as Ryder had pointed out, the non-utilities only served to pass along utility company dollars to the utility holding company.

Ryder testified also that stocks purchased for $22,015,926 by Southeastern Power & Light are carried at a ledger value of $65,413,155. This is a write-up of $43,397,229.

The following illustrates the method by which this was built up.

In 1924 Southeastern Power & Light transferred to one of its subsidiaries, Southeastern Securities Co., certain securities for $4,439,369—the price at which it had bought them. Southeastern Securities purchased another $1,035,256 worth of securities, making its total outlay for securities $5,474,625. Southeastern Securities then sold all its holdings to Southern Power Securities Corporation, another Southeastern Power & Light subsidiary. Southern Power Securities entered these securities, which had cost $5,474,625, on its books as having a value of $32,372,901. Almost at once Southern Power Securities was merged with Southeastern Power & Light, which also carried the securities on its books at $32,372,901. The whole transaction, from beginning to end, consumed two months, at the end of which Southeastern Power & Light had back all its securities, plus a few more, at an appreciated value of $26,898,275.

Rapid reincorporation is another method of inflating stock values, the commission has found. Georgia Power Co., now part of the Commonwealth and Southern group, while controlled by Southeastern Power & Light was reincorporated three times in three years. In the course of its various mergers and transfers the book value of its stocks was written up $33,453,000.

Regarding Carolina Power & Light, Carl H. Depue, examiner for the Trade Commission, testified that a duplication and inflation of approximately $19,000,000 in fixed capital accounts of the company was accomplished by "methods which are indefensible."

The methods were:

Creation of an intermediary company without any assets except the consideration received for qualifying shares, and issuance of its no-par stock at a value five times the par value of stock received therefor and four times the value as shown by the books of the issuing company.

Transfer of that investment to affiliated companies at the same arbitrarily inflated value and issuance therefor of their stocks at stated values which were "correspondingly unjustified."

Provisions in a merger agreement which "may be permissible under the laws of some States, but which not only do, but evidently were intended to, preclude good accounting practice and distort the facts."

Failure to segregate inflation and intangibles from those items of fixed capital which properly constitute the company's rate base, thus "handicapping if not preventing the State commission from determining whether prevailing rates are proper."

Excessive accruals for taxes or failure to adjust the accrued liability for taxes, thereby understanding the net income from operations, a correct statement of which is essential for rate-making purposes.

Inadequate retirement reserves, the effect of which "was to overstate to a considerable extent the company's net worth and income available for dividends, both vital factors in determining the value and desirability of securities."

Mr. WALSH of Montana. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Fess	King	Shortridge
Barkley	Fletcher	La Follette	Smith
Bingham	Frazier	McGill	Smoot
Black	George	McKellar	Steck
Blaine	Gillett	McMaster	Steiwer
Blease	Glass	McNary	Stephens
Borah	Goff	Metcalf	Swanson
Bratton	Goldsborough	Morrison	Thomas, Idaho
Brock	Gould	Morrow	Thomas, Okla.
Brookhart	Hale	Moses	Townsend
Broussard	Harris	Norbeck	Trammell
Bulkley	Harrison	Norris	Tydings
Capper	Hastings	Nye	Vandenberg
Caraway	Hatfield	Oddie	Walcott
Carey	Hawes	Partridge	Walsh, Mass.
Connally	Hayden	Patterson	Walsh, Mont.
Copeland	Heflin	Phipps	Waterman
Couzens	Howell	Pine	Watson
Cutting	Johnson	Pittman	Wheeler
Dale	Jones	Reed	Williamson
Davis	Kean	Robinson, Ark.	
Deneen	Kendrick	Schall	
Dill	Keyes	Sheppard	

The VICE PRESIDENT. Eighty-nine Senators having answered to their names, there is a quorum present.

The question is on agreeing to the motion of the senior Senator from Montana [Mr. WALSH].

Mr. NORRIS. Mr. President, before the vote is taken, I have a few observations to make. I have not as yet said anything upon the question of the reconsideration of the confirmations of the three nominees to the Federal Power Commission.

I want to say in the beginning that I do not in any degree or in any way belittle the importance of the legal question which has been discussed off and on for some time; I think it is important, and I believe the Senate has thus far acted within its legal right and had the right to do what it did in the reconsideration of the confirmations of these nominations. I agree entirely with the argument along that line which was so ably presented yesterday and has been continued to-day by the Senator from Montana. I do not want anyone to get the idea from what I shall say that in any way I want to detract from the importance of the legal argument or the justice and the legality of the course taken by the Senate. Nevertheless, to my mind the all-important question involved before the Senate is much greater than and will not be necessarily determined by the legal questions involved, regardless of which way those legal questions may be determined.

Mr. President, the question here involved, it seems to me, is fundamental, and is whether or not the American people are for 50 years to be required to pay a premium and an income on fictitious values, and whether we are going to say now that those who shall be here in our places 50 years from now, when these water-power leases end, shall be required to pay to these so-called investors illegal amounts on fictitious values which they put on their investment.

In order to understand properly just what I am going to argue, and what I believe to be the important question for our determination, the real issue in the matter, let me state briefly the historical facts relating to our present water power act.

For a great many years it was the practice of Congress to grant by special acts the right to individuals and corporations to dam navigable streams and streams upon the public lands of the United States and to give them whatever rights and powers were incorporated in those special acts. It soon became apparent to the right-minded and far-thinking economists of the country that that was a poor way in which to deal with the property of a great nation. As a culmination of the discussions which followed there came about the enactment of the Federal water power act in 1920. This act provided for the granting of leases by the Government for terms not exceeding 50 years to individuals or corporations who desired to construct dams upon the public streams and to develop hydroelectricity and sell the same to the people. That act provided that its terms should be controlled and governed by a commission and provided that the Secretary of Agriculture, the Secretary of War, and the Secretary of the Interior should constitute the commission. There were some of us who thought at the time the act was passed that that particular provision was wrong.

It develops under the workings of the act that those three Cabinet officers were unable—and I say this without charging any blame to any of them—to perform properly the duties which devolved upon them by virtue of the water power act. Moreover, those officials were appointed not with reference to the hydroelectric development or the building of dams. They had other duties of various kinds which took up all their time, and the result was that the work of the commission was mainly handled by an executive secretary. The commission—and again I say this without finding any fault with any of them or blaming them—found themselves ignorant to a great extent of what was going on in the enforcement of the water power act. That brought about the enactment of a law by Congress amending the original act and providing that the provisions of the law should be administered by five commissioners appointed by the President and confirmed by the Senate, who would have no other duties to perform except those pertaining to and involved in the carrying out of the provisions and terms of the Federal water power act.

The President appointed five commissioners. They were duly confirmed by the Senate. Three of them, before the ink was dry upon their commissions, without even notifying the other members of the commission and without any notice to anybody, met and arbitrarily removed three members of the staff of the Power Commission—Mr. Russell, the

attorney; Mr. King, the accountant; and Mr. Bonner, the executive secretary.

Mr. President, this brings us to a consideration of the importance of the situation which existed under the old commission, which came about because of the disagreement between Mr. Bonner on the one hand and Mr. Russell and Mr. King on the other hand. It is conceded, I think, by all those who have studied the question, particularly conceded by all members of the committee, I believe, or so stated on the floor of the Senate, that in that controversy Mr. Bonner, the executive secretary, in carrying out or attempting to carry out his views was favorable to the interests and the demands of the power companies, while Mr. Russell and Mr. King were trying to bring about a proper enforcement of the law, and in the performance of their duties had incurred the displeasure and the animosity of the Power Trust and the various power companies who were trying to obtain leases under the Federal water power act.

One of the important things—and this is one of the fundamental points in the matter—in the carrying out of the Federal water power act is to ascertain the investment made by the lessees in the building of the dams and the other work connected with the development of a power project. The law provides that at the end of the lease term of 50 years the Government of the United States may take over every one of the projects by paying to the lessees the actual cash investment. Although there are some other items involved, yet for the purpose of this discussion it is only necessary to notice this one point. Another thing we must bear in mind is the rates the lessees have the right to charge the consumers of electricity, whether it be the humble home using a few lights or a few accessories or whether the mammoth manufacturing establishment which operates great and powerful machinery by the use of electricity. Those consumers must pay a rate for electricity which will bring to the lessee a reasonable return upon the investment. Therefore the all-important question that confronts us at once is, What is the investment?

It becomes vitally important that the investment shall be honest and square, that no fictitious values shall be included in the investment, that no illegal items of expense shall be allowed as a part of the investment, because upon that investment is based the rate which the people must pay who use and consume the electricity and which investment the Federal Government will be compelled to pay if at the end of the 50 years the Government takes over the property.

Mr. Bonner took the power company view in all these controversies. The controversy which was continually arising was as to what the lessees should be allowed to include in their investments. The Senator from Montana [Mr. WALSH] has had inserted in the RECORD tables which will disclose to anyone who will examine them the great difference of opinion between Mr. Bonner on the one side and Mr. Russell and Mr. King on the other. So far as I know and so far as it has been developed in the discussion, it is conceded in that controversy, on at least those items, many of which are perfectly apparent to anyone who knows what they are, that Russell and King were right, that they stood for the interests of the Government, for an honest enforcement of the law, for an honest capitalization of the lessees' investment, and that Bonner, on the other hand, stood for the proposition of letting the lessees put into their investment accounts anything they pleased on the theory that at the end of 50 years the Government could then go into the matter and determine whether or not there had been anything wrong and decide whether or not it was to take over the property. There is the vital difference.

I want to invite particular attention to one thing. It is only a sample. It is a small matter in itself. One of the lessees under the water power act had taken a lease and built a dam. They had a celebration and a banquet when the dam was finished. The officers of the lessee invited their friends to the banquet. They bought for each guest a necktie. I have forgotten what they cost, but they were quite expensive neckties. Each guest was presented with a necktie. It develops that they have included in their investment account the cost of those neckties. Mr. Bonner wanted them included. Mr. King rejected the item. Mr. Russell, the attorney, defends King in his rejection. There are other items which do not require a lawyer to determine whether or not they are fair, running into millions of dollars, which are involved in practically every project where a lease has been made. On the Indian reservations, as I remember it now, a lot of money was paid out for dinners and entertainment for the Indians. I have no doubt that at the very banquet where they included the neckties they also included all the other expenses of the banquet, including the liquid refreshments, whatever they may have been.

So it runs through the entire situation. We have had these two men, faithful servants of the Government, saying "No; you can not put those items into your investment account," and another servant of the Government saying, "Yes; you can put them into your investment account." The difference runs into many millions of dollars. The Senator from Montana [Mr. WALSH] had inserted in the RECORD one of the tables showing that the items which King and Russell said should not be included in the investments up to date amounted to something over $100,000,000. But that is only a small part of it. There are comparatively few of the dams which have been completed. There are many more being built. There are pending many more applications for leases. In the future there will be still more applications for leases. This is going on continually. It is estimated, and it is only an estimate, that on the basis of past experience and the information which we have received so far, there will be upon all of the developments which will probably take place more than $500,000,000 of this kind of value put into the investment accounts, upon which the American people must pay a premium for 50 years, and for all of which, if the Government takes over the property at the end of that time, the Government must pay in cash. So it is a contest between the people on the one side represented by Russell and King and the Power Trust on the other side represented by Bonner. That is the fundamental thing which is involved in this dispute. The commissioners before the ink was dry on their commissions removed all three of these men. The Government then took back Bonner at what I understand to be an increased salary. The two faithful servants were put out into the cold; but the unfaithful man who represented the power interests was rewarded by being promoted—by being given a better job.

It is true, as has been said, these disputed items have never yet been passed on by the old commission or by any court; they are still in dispute; but as to the large portion at least of those items, it is just as clear as it was in the necktie incident that they should not and could not honestly be included in any fair investment cost.

We are presented, therefore, it seems to me, with the case of three servants of the Government, two of them faithful, standing for an honest enforcement of the law of our country, standing by the people, saying bravely and openly, "You shall not put into your investment account this water, this fictitious, this dishonest valuation"; and another servant of the Government saying, "You shall have the right to include them all"; and because of that dispute, the new commissioners say, "Why, there is a dispute; they are quarreling; these employees do not agree. Let us clear the platter and discharge all of them."

Mr. President, if you had in your office two clerks who had been in your employ for several years, and you discovered that they were in disagreement, that they were quarreling, that they were disputing about what was going on in your office, and upon investigation you found one of them was true to you, but that the other was false to you, what would you do? Would you do as these commissioners have done—discharge them both? Would you do as the administration has done—discharge all of them, and then reemploy the unfaithful servant and give him a promotion? What would you do if you were running a bank and you found that some of the employees of the bank were dishonest, and you looked into the matter and discovered there was one clerk who

was standing by the interests of the bank, protecting its depositors, earnestly insisting that the bank should be operated along honest lines, and that the others were trying to pave the way for a thief, were arranging the books so that dishonest men could get the funds of the bank; and the dispute became very bitter; when you came upon those men quarreling, would you dismiss them all? Would you discharge the faithful with the unfaithful servants? If you would not, then you would not be doing as the commissioners have tried to do in this case and as the administration is trying to do, because this man Bonner, though not taken back by the commission, was taken back by the Secretary of the Interior, one of the old commissioners, one who is close to the very head of the throne, who is close to the chief.

I can not escape the conclusion that the administrators of the law are siding in this controversy with the Power Trust against the people of the United States, the consumers of electricity, who have to pay the bills. If we are going to conduct the Government on this line, what is the reward for faithful service? How can we expect the servants of the Government in the future to be true to the law and to the interests of the people if we do not protect them when they stand up even against their superiors in office for the honest enforcement of the law and the proper protection of the rights of the citizens? If we are going to proceed on the theory the commission has adopted, we will give a reward for dishonesty; we will be placing a premium upon corruption; we will be rewarding the unfaithful and condemning those who are true. No business man would adopt such a policy; no business institution could live if it conducted its business on such a basis; and if the Government is going to pursue that course, it will be an invitation for dishonest and crooked officials and employees to violate the law in favor of big business, in favor of monopoly and organized corporate wealth.

Mr. President, this action by the commission is, in my judgment, illegal; but outside of that, laying aside all legal technicalities, even if we concede the Senate is wrong in the legal contention, the President of the United States now has the power, and he has always had it from the beginning of this controversy, to remove all three of these commissioners. If he was deceived when he appointed these commissioners, as the Senate was deceived when it confirmed them, he would not have let the sun rise the next morning without having issued an order to remove them; he would not have hesitated when the Senate respectfully asked him to send the papers back to the Senate to have sent them back; and, if the Senate had neglected or refused to act, in the exercise of his power and discretion he would immediately have removed these men, for I think it is practically conceded by those who have studied the subject, and know what the issue is, that they are, and they were when they took this arbitrary action, unfaithful servants. They were doing all they could in this great contest between the people and the Power Trust to help the Power Trust. They were burdening the people of the United States for the next 50 years; they were approving the conduct of the man who, if he could have had his way, would have given to all the power companies of the United States which have leases to build dams upon the public streams the opportunity wrongfully to extract from the dearly bought earnings of the people of the United States an exorbitant, an unholy, and an unjust tribute levied upon them by this method of watering investment accounts and building them up sky high with fictitious values. In the case of a dam that has recently been completed for which the power company claims an investment of over $11,000,000, Mr. King whose ability, whose honesty had never been questioned by any one, says that more than half of that $11,000,000 ought to be excluded, that it has no proper or legal right to be included in the investment account.

It is just such activities that brought King into disrepute, and when Russell as a lawyer defended him it brought him into disrepute and without a word of notice they were put out of their positions. Russell is still out; but I understand that, on account of the furor that its action caused over the country, the commission has reinstated King.

I want to digress and say, parenthetically, that the only thing that I ever heard about King that seemed to me to be wrong—and I have been following this controversy ever since it has been going on—the only thing I have ever known King to do that, in my judgment, was wrong was when he accepted the reappointment without insisting upon having Mr. Russell reappointed on the same basis. If one of them is wrong, they are both wrong; if one of them ought to be kept out, they ought both to be kept out. I presume, Mr. President, that has nothing of very great importance to do with the real controversy. Mr. King, if he can clear his conscience, can take his job back, and go under the service of these new commissioners, but the man who really let the public know what was going on will not be there. Russell, after all, basing his judgment upon the action of King, who was the technical expert, the auditor, was the lawyer who defended that action and in the open called attention to the various discrepancies. He is entitled to more credit, it seems to me, than King, although I do not want to take any of the credit away from King to which he is honestly entitled, and I think he is entitled to a great deal.

The reappointment of both these men by the commission would not have changed my attitude one particle; the reappointment of them both would not have changed the real nature of the commissioners who, arbitrarily and without right or reason, removed these faithful servants from office. I would have taken it as a gesture only to get by and through their present difficulties.

Mr. President, a great deal has been said over the country about this matter. Mr. Hoover himself has issued quite a statement that has been published in the RECORD; he has come to the defense of these three commissioners; but he has not defended and can not defend their action in this matter. His defense contains a lot of glittering generalities. He says, in this statement:

> The House of Representatives has the right to impeach any public official.

That is true. Everybody knows that; and they could impeach these officials. Impeachment, however, as every practical legislator knows, is not a practical remedy on account of the many difficulties involved, the large amount of time that must be consumed, and the large number of men whose time it must take. They could be impeached by the House of Representatives, and the Senate then would try them. It would take all the time of the Members of both branches of the Federal Legislature for perhaps months to impeach and try these men. They would have to neglect their other duties. So, as a practical proposition, all through the history of our country impeachment has been confined to some higher officials like a Cabinet officer, a Federal judge, or, in one case, the President himself.

There is nothing practical about that suggestion. Instead of having the House of Representatives impeach these men and having them tried by the Senate, the President of the United States could have settled the whole matter by one sentence with his signature at the end of it; and if that had been done these men would have been hunting jobs, instead of the faithful servants that they removed from office.

The President says:

> The orderly and constitutional manner of procedure by the legislative branch would be by impeachment and not through an attempt by the Senate to remove them under the guise of reconsidering their nominations or any attempt to force administrative agencies to a particular action.

Mr. President, the Senate has not taken any action the intention of which was to force anybody else to a particular action. The Senate has tried to do its duty. Under the Constitution it has a right to make rules. It has proceeded, and it is admitted by all that it has proceeded, in accordance with those rules, and has reconsidered the vote by which these men were confirmed. It has reconsidered it because every Member of the Senate was shocked when he read in the morning paper that these commissioners whom the Senate had just confirmed had met—only part of them had met—without notice to anybody, without the full com-

mission being present, without an opportunity for all of them even to be there, and had arbitrarily, without notice, removed these faithful servants from public office.

Then the President says:

Mr. George Otis Smith has been in public service as a member and head of the Geological Survey for 30 years—

That, of course, is true. Most of us know him. Those of us who knew him best knew that he was not a man of very much force. Some of us, quite a number of us, voted against him without perhaps any direct evidence, just from their knowledge of the man that he was a "yes man"; that he would carry out the orders of his superiors. He would be a standpatter when there was a standpat President; he would be a progressive when there was a progressive President; he would be a Democrat if there was a Democratic President.

Through Democratic as well as Republican administrations—

Says the President—

he has distinguished himself as an independent devoted public official with a larger knowledge of water-power resources of the United States than any other man. He was chosen as chairman of the commission.

I concede that a man might be selected as a member of this commission who was not an engineer, and he might be a good man. Mr. George Otis Smith is not an engineer. I am not making any complaint on that account. I am conceding that a man might be selected who knew nothing about the water-power business, and he might develop into a good administrative official, and study the subject, and become an expert in time. Mr. Smith knew nothing about water-power development. He had studied the country from one end to the other as a geologist. He knew about the watersheds, but he did not know what would be necessary to build a dam. He did not know anything about the technicalities that are involved in the matter. So, while I am not condemning him because he did not know, I am calling attention to the fact that what the President says about him does not qualify him one iota for this position.

Then the President goes on and tells about the others. He says, later on:

Upon confirmation, official notice was forwarded to me by the Secretary of the Senate in accordance with the precedents of many years. I thereupon issued the commissions and the appointees were duly sworn into office.

Nobody criticizes that. That is what happened, I presume; but after that was done, and within two days, under the rules of the Senate the motion to reconsider was made, and in due time was passed by what I consider a large majority.

The President says, in the latter part of his statement:

The chairman of the commission has, however, expressed disapproval, especially of the former secretary and the solicitor, because of long-continued bickerings and controversies among employees of the old commission.

I have explained, I think, just what those controversies were; and I have shown, I believe, that when we know what those controversies were, when we know what those bickerings were that the President mentions, we are led irresistibly to the conclusion that Russell and King were trying to get an honest enforcement of the law, and to stand by the rights of the people of the United States as against the powerful influences of the so-called Power Trust.

The President says:

I regret that the Government should be absorbed upon such questions as the action of the Power Commission in employment or nonemployment of two subordinate officials at a time when the condition of the country requires every constructive energy.

And yet, Mr. President, the action in this case perhaps goes farther and means more to the people of the United States than any other action that has been taken by a subordinate official in the last 50 years. It is going to affect unborn generations that will be required to pay an income on fictitious values that King and Russell tried to prevent; and the President calls them bickerings—bickerings!

So I can reach no other conclusion than that Mr. Smith, who was the dominating power at this meeting, undoubtedly was acting in accordance with what he believed to be the wish of the Secretary of the Interior and of the President himself. The fact that the President has come to his defense, and that the Secretary of the Interior has opened his arms and taken Bonner in and given him a promotion, it seems to me demonstrates that we are justified in drawing that conclusion.

I desire to read a part of an editorial that was put into the RECORD several days ago, from the Washington Herald, entitled "The President versus The Public." It winds up by saying:

"As for Mr. Hoover himself, he is apparently acting not as the President of the United States but as the president of the Power Trust."

By action that speaks louder than words, Mr. Hoover now shows that the Hearst newspapers were right in their conclusion.

Thus in the eternal struggle between justice and privilege, of which the conflict between the Senate and the President is the latest engagement, you see the Senate championing the cause of the public and the President joining forces with the Power Trust.

So that if Mr. Hoover is not president of the Power Trust now he probably will be after 1932.

The Washington News, Mr. President, published in this city, had an editorial bearing directly upon this subject. I send it to the desk and ask that it be read by the clerk. The title is "The Issue."

The VICE PRESIDENT. Is there objection? The Chair hears none, and the editorial will be read.

The legislative clerk read as follows:

[From the Washington News of January 12, 1931]

THE ISSUE

President Hoover's denial that he is a defender of the power interests could be accepted more readily if it had not been made a few minutes before his Secretary of the Interior restored Frank E. Bonner to the Government pay roll.

This sounds like a minor item compared with the major conflict now under way between the Senate and the President over the three Federal Power Commissioners. Hoover, no doubt, would like it to be ignored in the excitement of his wrathy attack upon the Senate. But it goes through all the smoke and thunder to the very heart of the matter.

There has never been the slightest doubt about Frank E. Bonner. Bonner whose appointment as executive secretary to the outgoing Power Commission was made on recommendation of a power company official; Bonner who recommended that the commission drop regulation of power company securities; Bonner who tried to break up the commission's accounting work; Bonner who tried, unsuccessfully, to suppress opinions of Solicitor Russell squeezing the water out of power company accounts, and then tried to have the position of solicitor abolished; Bonner who, failing again, sent an investigator to Montana to try to smear Solicitor Russell's reputation; Bonner who told the Senate the power companies "are being persecuted"; Bonner who, as he saw his tenure of office drawing to an end, tried to get the commission to issue a "minor part" license to the Appalachian Electric Power Co., freeing that company and possibly three-fourths of all companies from all regulation by the Power Commission.

Bonner was dismissed by the new power commissioners. But so were King and Russell, the men who had tried to enforce the Federal water power act over Bonner's opposition.

And now Bonner is welcomed back with open arms into the Government service. King and Russell are left to find jobs where they may.

Hoover speaks the truth when he says the people will pass upon all this with unerring judgment. His phrases about the duty of the Executive to resist encroachment of the Senate upon his prerogatives will not blind an electorate which showed last November its understanding of the underlying conflict.

From the beginning there has never been a real issue in this quarrel except enforcement of the Federal water power act.

That was the issue when King and Russell refused to acquiesce in Bonner's attempts to nullify the act.

It was the issue when the President picked for his new Federal Power Commission four men who knew nothing whatever about the intricate power law or the difficulties of enforcing it, and—for chairman—a man who had shown himself a thoroughly tractable bureaucrat.

It was the issue when the Senate reluctantly confirmed these men, failing to find in their undistinguished pasts an affirmative reason for not doing so.

It was the issue when Smith, Garsaud, and Draper rushed to take the oath of office and to dismiss from the commission King and Russell, who had resisted the power companies.

It was the issue when the Senate, acting in the only way an honest legislative body could act, reconsidered its confirmation of these men.

It was the issue when Hoover elected to defend his three commissioners and defy the Senate in its right to refuse to approve them.

It was the issue when these self-discredited new "commissioners" secretly began reconsideration of the iniquitous "minor-part license" case while the Senate was voting them fit for office.

It was the issue when Hoover's Secretary Wilbur found a job for the repudiated Bonner.

And it will be the issue when the voters eventually "pass unerring judgment" on this power fight.

Mr. NORRIS. Mr. President, I think that editorial states the issue. That after all, is the issue. These men sink into insignificance. I would not like to see my country do an injustice to a faithful public servant; but, after all, Russell and King are only human beings. It may be that they must be sacrificed upon the altar of human progress. In the eternal struggle between right and wrong, between organized commercial greed and common honesty on the part of subordinate officials of the Government, it may be that they must be sacrificed, because it seems, now at least, that the man who dares to say anything against the Power Trust, who dares to defend the people against the imposition of unjust rates on the part of monopoly, is not in good standing in this administration. Subordinate officials, it may be, will be removed from office. But they get their rights from higher up. They know they have the approval of those who give them their jobs. So it does not look bright for men like Russell and King, who have stood for the rights of the people.

Mr. President, that is the issue. The President said in his statement, in effect, that the people would later render unerring judgment. They will. They may be slow, but judgment will come, and to a great extent it has come. In the last national election in every instance with which I am acquainted, as far as I know in every instance where the power question was in issue, the people by their votes upheld the hands of such men as Russell and King. They overrode the party machinery of both of the old parties in some instances. They sent into private life the only Member of the House of Representatives who was a candidate and who had received the open indorsement of President Hoover, in a district overwhelmingly Republican.

Out in Montana they reelected the able senior Senator from Montana [Mr. WALSH], who honors me with his presence, against the powerful opposition of the Power Trust, backed by all the political machinery that political mechanism could put together.

Out in Oregon they rode roughshod over both of the old parties and elected a man governor of that great State on this issue.

Out in Wisconsin they overthrew a governor serving his first term and who, according to all past theories and tenets of politics, would have been reelected to a second term. They overthrew him in favor of that little giant, Philip F. La Follette, the brother of the senior Senator from Wisconsin, and they put him in the governor's chair by an overwhelming majority, one of the great issues involved being the power question.

Yes, Mr. President Hoover, the people will render judgment, and unerring judgment, and those who have been backing up the Power Trust will feel the weight of the people's displeasure.

I have not narrated all the cases. I could have gone into parts of the campaign with which I was more familiar and showed where the Power Trust was put out of business by an outraged people. So when the power people are trying, through the instrumentality of a Federal commission, to include illegal and unjust items in their expense accounts, and charge the people of the country for 50 years for certain investments by compelling them to pay illegal and unholy rates upon them, they will find that the people will not always stand for it.

The power question has become more important every day. It was, as I have already stated, the fundamental, the paramount issue in the last campaign in many portions of the country, not in one locality but in almost every locality. It figured to a great extent in the great State of Pennsylvania, and the power people were defeated.

Yes, Mr. Hoover, they will render unerring judgment and will not keep in office men like these power commissioners, who remove the faithful servants of the Government and promote those who represent great wealth and monopoly.

Mr. President, at this point I want to have printed as part of my remarks an editorial appearing in the New Republic of date January 21, 1931, commencing on page 257, entitled "Mr. Hoover and the Power Issue."

The PRESIDING OFFICE (Mr. WHEELER in the chair). Is there objection?

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MR. HOOVER AND THE POWER ISSUE

There are two questions involved in the dispute between President Hoover and the Senate over the Federal Power Commission. Mr. Hoover has tried to treat them as one, but it is important that they should be separated and considered independently. In order to distinguish between them it is necessary to recall just what has happened.

Since 1920 the United States has had a Federal water power act with important duties in regard to hydroelectric power leases. The original act made the Secretaries of War, Agriculture, and the Interior the members of the commission; but it speedily became apparent that the matter was too important to be left as a spare-time job for these members of the Cabinet. After years of agitation which came from many quarters (including the New Republic) Congress last summer passed a new law setting up a separate commission with five members. Mr. Hoover in December sent in as his nominees the names of Dr. George Otis Smith, director of the Geological Survey; Claude L. Draper, Cheyenne, Wyo., a member of the State public service commission; Marcel Garsaud, New Orleans, La., a civil engineer and former manager of the New Orleans port commission; Ralph B. Williamson, Yakima, Wash., an attorney; and Frank R. McNinch, Charlotte, N. C., also an attorney.

The all-important question about these men, of course, was and is, to what extent are they subservient to the private-power interests? This is important, not only because of their present serious responsibilities but because they may later be given additional powers in regard to a national development of the utmost importance. The United States is undergoing a rapid growth of hydroelectric power. "Pools" of power are being set up which treat large regions composed of numerous States as a single unit. Transmission lines are being constructed which, once they have been located, will be enormously difficult to alter. A fair parallel is the two decades during and immediately following the Civil War, when the Nation's railroads were laid down. No one will ever know how many hundreds of millions of dollars of potential or actual wealth were then lost through the unplanned, unscientific, haphazard location of the railroads; no one can ever estimate the terrific cost to the country of the strangle hold which these lines got on scores of communities and even States. The question as regards hydroelectric power goes far beyond merely saving to users of electricity the many millions of dollars they now pay out in exorbitant profits; it is one which is intertwined with the whole question of an intelligently planned economic basis for our civilization.

From the moment Mr. Hoover submitted the names of his nominees the progressives in Congress realized that it was doubtful whether they were the vigilant, aggressive watchdogs of the public welfare needed to carry on the fight against the predatory power interests. But while their examination before the Senate Committee on Interstate Commerce was unsatisfactory, it was so inconclusive that the Senate progressives did not feel justified in fighting the nominations, and accordingly confirmed them on December 20. How serious an error this was they realized three days later.

On December 22 three of the five commissioners were sworn in—Messrs. Smith, Garsaud, and Draper—and they promptly proceeded to show where their allegiance lay. On their very first day in office they dismissed two of the Power Commission's most useful men, Chief Accountant William V. King and Solicitor Charles A. Russell. Afterward, when the storm had broken, a contemptible attempt was made to pretend that their dismissal was only a technical matter, to be met by their filing an application for reappointment. But in fact, although every other employee of the commission is to be taken back, King and Russell are not, if the three commissioners and Secretary Wilbur and the Power Trust can help it. Mr. Smith, who was made chairman, explained that they were dismissed because of "disharmony" in the offices of the commission. They couldn't get along with the executive secretary, F. E. Bonner, who resigned a few weeks ago and has not been reappointed.

What was the nature of their "disharmony"? Thanks chiefly to the patient researches and able pamphleteering of Judson King, director of the National Popular Government League, the facts in this matter are now fairly well known. Mr. Bonner, during his term in office, showed a conspicuous desire to interpret the law in every possible case to favor the private power interests. He wanted, for instance, to accept any and all statements of the power companies as to their "actual, legitimate original cost" of construction of plants—an important factor in determining the rates which may be charged for power. He did not

care how dilatory the companies were in making their reports, and, indeed, for 10 years the Government has let the power interests postpone indefinitely the statements on which rate structures ought to be based. The law permits private companies, in certain cases which are of negligible importance, to operate under so-called "minor leases," and when this is done much of authority of the Power Commission to regulate is waived. When the Appalachian Power Co., a subsidiary of the Electric Bond & Share, of New York, tried to sneak out from under the regulatory provisions by getting a "minor-lease" permit for an 80,000-horsepower site on the New River in Virginia and West Virginia, Mr. Bonner was whole-heartedly in favor of this outrageous violation of the spirit of the law. He sided with the power interests against the commission itself on the refusal of the private companies to open their books; he produced uncandid annual reports of the commission; he permitted the companies to pad their valuations to the extent of millions of dollars, and so on.

Against these activities Messrs. Russell and King set their faces. King, as chief acountant, has dug up instance after instance—he revealed 27 to the Senate Committee on Interstate Commerce—where the power interests have padded their statement of actual investment to the extent of many millions of dollars. Russell, as solicitor, fought the scheme to circumvent the statute with "minor leases," even though Bonner told him it was his business to find a way around the law. Again and again these two men, practically alone against the whole administration, have fought in the public interest. When they were dismissed, therefore, it was no mere discharge of a couple of trouble makers. The trouble they were making was directed against predatory private capital, and was in the interest of the country. It was because the Senate progressives were well aware of these facts that the vote was taken to reconsider the confirmation of Smith, Garsaud, and Draper.

Whether or not the Senate acted legally in requesting the President to return the names to them is a complicated legal question on which laymen can hardly pass. The Senators contended that they had the power to do this within two legislative days, and because of the Christmas recess this time limit had not expired. It is also contended that the Senate has the right to make its own rules, and that it can modify these rules, either as to reconsideration of nominations or anything else at any time. It now seems likely that Comptroller McCarl will withhold the pay of the three Power Commission members, and thereby open the way for a court adjudication on the legality of their holding office.

But this is not the crucial issue. The most important matter is the relation of Mr. Hoover to the whole affair. If he had been content merely to deny the right of the legislative branch to dismiss officials of a commission, he would have had a better case. But the President made a grave political blunder by going on to discuss the qualifications of the commissioners and the merits of their action in dismissing Russell and King.

In a violent public statement he insisted that the three commissioners are "outstanding public servants,' who have "unique fitness" to serve on the Power Commission. Russel and King he dismisses as "two subordinate officials," and again repeats the myth about the "long continued bickerings and controversies." The answer to these contentions we have already indicated. The record shows that Smith, Garsaud, and Draper are not outstanding public servants. The record also shows that Russell and King have performed a magnificent work in the public interest, and that the "bickerings and controversies" consisted, and consisted solely, in their attempts to enforce the water power act against the opposition of Secretary Bonner and of the whole Hoover administration.

Mr. Hoover, when he insists on the prerogatives of the executive branch, thereby assumes responsibility for the behavior of his subordinates. It is his duty to see that they perform their duties in the public interest. Yet we find the men he has chosen for the Power Commission, on their first day in office, acting precisely as they would have done if they had been taking orders from the Power Trust; and we find the President, who has never shown any anger over the numerous scandals of the two administrations of which he was a part, displaying an astonishing rage, not at the actions of his Power Commission, but at the attempt of the Senate to safeguard the public welfare by recalling its ill-advised confirmation of the appointments. Mr. Hoover, again donning the hair shirt, resorts to his favorite device of impugning the motives of those who oppose him. He thinks the Senate is playing partisan politics. This inability to concede that anyone can differ with him and still be honest is a psychological weakness of Mr. Hoover which has often been discussed and needs no further comment here. But when he adds that the Senate hopes "to symbolize me as the defender of power interests," it is impossible to avoid asking the question: What other interpretation can anyone put upon his conduct?

Mr. FESS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Borah	Bulkley	Copeland
Barkley	Bratton	Capper	Couzens
Bingham	Brock	Caraway	Cutting
Black	Brookhart	Carey	Dale
Blaine	Broussard	Connally	Deneen
Dill	Heflin	Morrow	Smoot
Fess	Howell	Moses	Steiwer
Fletcher	Johnson	Norbeck	Stephens
Frazier	Jones	Norris	Thomas, Okla.
George	Kean	Nye	Townsend
Gillett	Kendrick	Oddie	Trammell
Goff	Keyes	Partridge	Tydings
Goldsborough	King	Phipps	Vandenberg
Gould	La Follette	Pine	Walcott
Hale	McGill	Pittman	Walsh, Mass.
Harris	McKellar	Reed	Walsh, Mont.
Hastings	McMaster	Robinson, Ark.	Watson
Hatfield	McNary	Sheppard	Wheeler
Hawes	Metcalf	Shortridge	Williamson
Hayden	Morrison	Smith	

The VICE PRESIDENT. Seventy-nine Senators have answered to their names. A quorum is present.

Mr. WATSON. Mr. President, my position on the pending motion and resolution can be very briefly stated. I shall vote against both of them. I shall not enter upon a discussion of the details of the situation discussed at length by the able Senators from Montana [Mr. WALSH] and Nebraska [Mr. NORRIS], because I believe that the matter is entirely out of the hands of the Senate at this time, that this body has no jurisdiction of the question, nor is there any manner by which it can acquire jurisdiction of the question at this time or at any time in the future.

These commissioners were regularly appointed. They were duly confirmed by the Senate in accordance with our rules and notice of their confirmation was sent to the President of the United States, whereupon the commissioners were commissioned by the President and entered immediately upon the discharge of their duties and obligations. Therefore I regard it as a closed incident so far as the United States Senate is concerned, one with which we have nothing to do, and one with which we can have nothing to do in the future. I see no good purpose can be served by voting to recommit the nominations to the committee or by adopting a resolution to employ an attorney to prosecute the case in the courts. For that reason I shall vote against both the propositions and ask my friends to do likewise.

The VICE PRESIDENT. The question is on the motions of the Senator from Montana. The Chair will ask if there is objection to voting as one upon the three questions to refer the three nominations back to the committee? The Chair hears none, and it is so ordered.

Mr. WALSH of Montana. Mr. President, on yesterday the Senator from Idaho [Mr. BORAH] suggested that it might be advisable to vote directly on the question of rejecting or confirming the nominations rather than on the question of recommitting. I do not know whether he has anything further to say on the subject, he not being present at the moment. The motion to recommit, I take it, is the question before the Senate.

With respect to the resolution which I suggested I would offer, that in its nature must go to the Committee to Audit and Control the Contingent Expenses of the Senate before final action can be had upon it, so there is no course to pursue except to vote on the motion to recommit, upon which I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. WHEELER (when his name was called). On this question I have a pair with the junior Senator from Idaho [Mr. THOMAS]. I transfer that pair to the senior Senator from Minnesota [Mr. SHIPSTEAD] and vote "yea."

Mr. LA FOLLETTE. I was requested to announce that the senior Senator from Minnesota [Mr. SHIPSTEAD] is unavoidably absent. If present, he would vote "yea."

The roll call was concluded.

Mr. GILLETT (after having voted in the negative). I have a general pair with the Senator from North Carolina [Mr. SIMMONS]. Being unable to obtain a transfer, I withdraw my vote. If permitted to vote, I would vote "nay."

Mr. BINGHAM. I have a general pair with the junior Senator from Virginia [Mr. GLASS], who is absent. I am informed that I may transfer that pair to the junior Senator from Pennsylvania [Mr. DAVIS], which I do, and vote "nay."

Mr. HASTINGS. I have a pair with the senior Senator from Mississippi [Mr. HARRISON], who is absent. Therefore

I withhold my vote. If permitted to vote, I would vote "nay."

Mr. THOMAS of Oklahoma (after having voted in the affirmative). I inquire if the junior Senator from Illinois [Mr. GLENN] has voted?

The VICE PRESIDENT. That Senator has not voted.

Mr. THOMAS of Oklahoma. I have a pair with the Senator from Illinois [Mr. GLENN]. I find that I can transfer that pair to the Senator from Minnesota [Mr. SCHALL], which I do, and I will allow my vote to stand.

Mr. WATSON. I wish to announce that my colleague the junior Senator from Indiana [Mr. ROBINSON] is necessarily absent on account of illness in his family.

Mr. STEPHENS. I have a general pair with the junior Senator from Indiana [Mr. ROBINSON], who is necessarily absent. I am informed, however, that if he were present he would vote as I intend to vote, and I am therefore at liberty to vote. I vote "nay."

Mr. BROUSSARD. I wish to announce that my colleague [Mr. RANSDELL] is detained from the Senate on account of illness.

Mr. FESS. I desire to announce the following general pairs:

The Senator from Colorado [Mr. WATERMAN] with the Senator from Virginia [Mr. SWANSON];

The Senator from Missouri [Mr. PATTERSON] with the Senator from New York [Mr. WAGNER]; and

The Senator from Rhode Island [Mr. HEBERT] with the Senator from Iowa [Mr. STECK].

The result was announced—yeas 45, nays 32, as follows:

YEAS—45

Ashurst	Dill	King	Sheppard
Barkley	Fletcher	La Follette	Smith
Black	Frazier	McGill	Thomas, Okla.
Blaine	George	McKellar	Trammell
Borah	Harris	McMaster	Tydings
Bratton	Hatfield	Morrison	Walsh, Mass.
Brookhart	Hawes	Norbeck	Walsh, Mont.
Bulkley	Hayden	Norris	Wheeler
Caraway	Heflin	Nye	Williamson
Connally	Howell	Pine	
Copeland	Johnson	Pittman	
Cutting	Jones	Robinson, Ark.	

NAYS—32

Bingham	Fess	McNary	Shortridge
Brock	Goff	Metcalf	Smoot
Broussard	Goldsborough	Morrow	Steiwer
Capper	Gould	Moses	Stephens
Carey	Hale	Oddie	Townsend
Couzens	Kean	Partridge	Vandenberg
Dale	Kendrick	Phipps	Walcott
Deneen	Keyes	Reed	Watson

NOT VOTING—19

Blease	Harrison	Robinson, Ind.	Swanson
Davis	Hastings	Schall	Thomas, Idaho
Gillett	Hebert	Shipstead	Wagner
Glass	Patterson	Simmons	Waterman
Glenn	Ransdell	Steck	

So the motion to recommit the nominations to the Interstate Commerce Committee was agreed to.

Mr. WALSH of Montana. I now offer the resolution to which I referred on yesterday, and ask unanimous consent that it may be laid before the Senate and may be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

The VICE PRESIDENT. Is there objection?

Mr. NORRIS. Mr. President, I have no objection to that, but I want to suggest to the Senator from Montana an amendment. The resolution provides that the counsel to represent the Senate shall be selected by the chairman of the Committee on the Judiciary. I ask the Senator from Montana to change that so that such counsel shall be selected by the Committee on the Judiciary.

Mr. WALSH of Montana. I have no objection to that. I ask that the words "the chairman of" be stricken out, so that it will read "the Committee on the Judiciary."

The VICE PRESIDENT. The Senator from Montana modifies his resolution.

Mr. WALSH of Massachusetts. I ask that the resolution may be read.

The VICE PRESIDENT. The resolution will be read as modified.

The Chief Clerk read the resolution (S. Res. 415), as follows:

Resolved, That the district attorney for the District of Columbia be, and he hereby is, requested to institute proceedings in quo warranto under the code of the said District in the supreme court thereof to test the right of George Otis Smith, of Marcel Garsaud, and of Claude L. Draper, each as a member of the Federal Power Commission; that he be requested to associate with him counsel for the United States Senate in such proceedings; that the Committee on the Judiciary, in the event that the requests herein recited are acceded to, be, and it hereby is, authorized to engage such counsel at a cost not to exceed $2,500, the expense of the litigation to be paid out of the contingent fund of the Senate.

The VICE PRESIDENT. Is there objection to the resolution, as modified, being referred to the Committee to Audit and Control the Contingent Expenses of the Senate?

Mr. JONES. Mr. President, it is not very material, but I want to state briefly why I voted "yea" on the motion of the Senator from Montana on which a vote was taken a few moments ago. I wanted to get these names off the Executive Calendar. I do not think it affects the legal status of the situation one iota whether they are on the calendar, before the committee, or in the wastebasket.

Mr. BORAH. Mr. President, is the motion now pending to refer the resolution to the Committee to Audit and Control the Contingent Expenses of the Senate?

The VICE PRESIDENT. The Senator from Montana has asked unanimous consent to refer the resolution to the Committee to Audit and Control the Contingent Expenses of the Senate. It would necessarily have to go there, as it proposes to take money out of the contingent fund.

Mr. BORAH. Before the resolution shall have been finally disposed of I will have a suggestion to make, but if that is the request I will not now make the suggestion.

Mr. JONES. Mr. President, I thought it had developed into a practice for the Senate to send resolutions such as this first to the committee having jurisdiction of the subject matter, and then, if such committee should recommend the adoption of the resolutions, to refer them to the Committee to Audit and Control the Contingent Expenses of the Senate. I will make no objection in this instance, but I think that would be the wise course to follow.

Mr. WALSH of Montana. That is frequently done, of course, in connection with matters that have not had the consideration of the Senate, but inasmuch as the question involved here has been thoroughly exploited, I see no occasion at all to refer the resolution to the Committee on the Judiciary.

The VICE PRESIDENT. Is there objection to the resolution, as modified, being referred to the Committee to Audit and Control the Contingent Expenses of the Senate?

Mr. BINGHAM. Mr. President, would the Senator from Montana object to the resolution being referred to the Committee on the Judiciary, in order that that committee may look into the matter before we start proceedings of the kind contemplated? It seems to me that this is the committee to which it should be referred because the Committee to Audit and Control merely has the duty of seeing whether there is sufficient money in the contingent fund with which to pay the expenses involved in a proceeding of the kind suggested.

Mr. WALSH of Montana. I should have no objection at all to having the resolution referred to the Committee on the Judiciary.

Mr. BINGHAM. Then let it be so referred, Mr. President.

The VICE PRESIDENT. Does the Senator from Montana modify his request and ask that the resolution be referred to the Committee on the Judiciary?

Mr. WALSH of Montana. Yes.

The VICE PRESIDENT. Is there objection?

Mr. TYDINGS. Mr. President, is it in order to move an amendment to the resolution?

The VICE PRESIDENT. It is not in order on the question of reference only. The resolution is not before the body as yet.

Mr. TYDINGS. May I say for the information of the Chair that what I had in mind was that instead of having the three names incorporated in one resolution I should like

to see one name incorporated in each of three similar resolutions, because I would not be ready to support the resolution covering all three nominees.

The VICE PRESIDENT. The Chair believes that when the resolution shall be returned a separate vote may be had. Without objection, the resolution will be referred to the Committee on the Judiciary. The Executive Calendar is in order.

THE JUDICIARY

The nomination of Albert W. Harvey to be United States marshal, district of Vermont, was announced as first in order on the calendar.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

POSTMASTERS

The Chief Clerk proceeded to read the nominations of postmasters.

Mr. MOSES. I ask unanimous consent that all post-office nominations may be confirmed en bloc.

The VICE PRESIDENT. Without objection, the post-office nominations are confirmed en bloc. If there be no further executive business, the Senate will resume the consideration of legislative business.

The Senate resumed the consideration of legislative business.

PROHIBITION ENFORCEMENT IN THE DISTRICT OF COLUMBIA

The VICE PRESIDENT. The pending question is the motion of the Senator from Nebraska [Mr. HOWELL], which will be stated by the clerk.

The CHIEF CLERK. The Senator from Nebraska moves that the Senate proceed to the consideration of Order of Business No. 747, being the bill (S. 3344) supplementing the national prohibition act for the District of Columbia.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Nebraska.

Mr. KING. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Utah will state his parliamentary inquiry.

Mr. KING. Is a motion in order to supersede the pending motion by one to proceed to the consideration of some other measure?

The VICE PRESIDENT. Such a motion would not be in order until the pending question shall have been voted upon.

Mr. HOWELL. Mr. President, the question is debatable, is it not?

The VICE PRESIDENT. The question of proceeding to the consideration of the bill is debatable.

Mr. HOWELL. Mr. President, I do not propose to proceed with a debate on the pending bill at this time. I merely wish to make a statement. Senate bill 3344, now before the Senate, was prepared by the Attorney General. Subsequently, some additions were made. The Attorney General stated in a letter to the Senator from Kansas [Mr. CAPPER], chairman of the Committee on the District of Columbia, which had this bill under consideration, that, with the exception of certain inclusions in section 10—and there are 16 sections to the bill—he had no objection to it. In his own words:

> In other respects in which Senator HOWELL's bill differs from that prepared in this department, I see no reason to take any exception to what his bill contains.

In short, of the 16 sections of the bill the Attorney General disagreed with certain inclusions in but one section, namely, section 10, which, of course, will be discussed in the Senate.

I merely wanted to make this statement so that it would be understood that this is a measure that is desired by the administration, possibly with the exception of two provisions in section 10.

The VICE PRESIDENT. The question is on the motion of the Senator from Nebraska.

Mr. WALSH of Massachusetts. Mr. President, I should like to inquire of some member of the Republican steering committee if that committee recommended that the bill proposed by the Senator from Nebraska be the next order of business for the Senate?

Mr. HOWELL. This is the first bill on the steering committee's file.

Mr. WALSH of Massachusetts. I want to call the attention of the country to the fact that, with all the grave and important public questions pending before the country, the Republican steering committee recommends that this bill be taken up at this time for consideration.

Mr. WATSON. Is the Senator in favor of taking it up?

Mr. WALSH of Massachusetts. I certainly am not in favor of taking it up, under present conditions, and I think that it is a reflection upon the Republican steering committee that at this juncture in the present short session a bill of this kind should be placed above other bills.

Mr. WATSON. Mr. President, the genial Senator from Massachusetts may satisfy his own conscience by voting against taking up the bill, as a great many others will do who, under ordinary circumstances, might favor the proposition in and of itself.

As to whether or not this is the time to take up the measure is for the Senate to decide. A steering committee simply makes up a tentative program which it suggests to the Senate. It has no authority in and of itself. It is only suggestive. If a majority of the Members of the Senate are not in favor of taking up this proposition at this time, all they have to do is to vote that way.

Mr. HAYDEN. Mr. President, will the Senator yield?

Mr. WATSON. I yield to the Senator.

Mr. HAYDEN. If this motion is defeated, will the next motion be to take up the following bill on the steering committee's list, which is the bill to provide a shorter work week for postal employees?

Mr. WATSON. Not necessarily so. I understand that there are various other measures here that may be taken up. This list is only suggestive in case there is nothing else before the Senate. If the proposition of the Senator from Nebraska is defeated, then any other proposition may come up that is not on this committee list. There are other resolutions here.

Mr. HAYDEN. Does the steering committee seek to follow the order laid down in the list furnished the Senate?

Mr. WATSON. If there is nothing else before the Senate to do.

Mr. HAYDEN. Would there be anything before the Senate to do if we defeated this motion?

Mr. WATSON. I have not looked over the list; but there are other resolutions here.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. WATSON. Certainly.

Mr. TYDINGS. I should like the Senator to know that I, for one, while I am opposed to this bill, do not intend to make my opposition in the nature of a filibuster. May I say with all frankness, however, after having talked to several Senators on both sides of the aisle who are opposed to the measure, that in all probability there will be from a dozen to twenty amendments offered to the bill, each of which is likely to be debated at considerable length; and in my best judgment I believe that a period of four or five days or a week would be necessary to take care of all of the arguments on both sides of this bill before it could be disposed of.

The Senator from Nebraska knows that I have done nothing to impede the progress of his bill through dilatory tactics. May I say to the Senator that if the bill does come up now, it is going to lead to considerable debate. There are a number of Senators on this side with many, many amendments; and I do not believe the legislative condition is such that we can afford to take up this bill with such matters as a 44-hour week for postal employees pending, and other important legislation.

Mr. BARKLEY. Mr. President——

Mr. TYDINGS. May I continue further to say that the District of Columbia already has a prohibition law, the Volstead Act, which applies to the entire country. Therefore, if the Senator's bill is not considered, the District will not be without sufficient enforcement.

I therefore hope, in the interest of general legislative procedure, that the Senator will not press his motion at this time.

Mr. BARKLEY. Mr. President, does not the Senator from Maryland think that this measure ought to be disposed of as rapidly as possible, in order that that great unemployment measure, also on the program of the steering committee, the Philippine independence bill, could be taken up and disposed of at this session?

Mr. TYDINGS. That is a splendid suggestion.

Mr. BARKLEY. That is one of the bills brought in here to remedy the depression, and I think it ought not to be postponed any longer than necessary.

Mr. TYDINGS. I think that is proper, Mr. President; and when the question is put to the Senate I ask for the yeas and nays.

The VICE PRESIDENT. The question is on the motion of the Senator from Nebraska [Mr. HOWELL].

Mr. ASHURST. I call for the yeas and nays.

Mr. BINGHAM. Mr. President, of course when we see the leader of the militant wets and one of the leaders of the militant drys sitting together and asking that this bill be not taken up at this time, one is inclined to wonder just how an ordinary average person listening and desiring to do right should vote.

As a matter of fact, I am very much opposed to this bill; and, having talked with various Senators on the floor, I believe that the opposition to it is general, and that since the Wickersham report has been read and is shown to be in opposition to it there will be very little support to the measure. I should like to see it voted down rather than not be given an opportunity to vote on it at all.

As I say, I am in doubt, seeing these great leaders on both sides in opposition to the bill; but I shall vote to take it up at this time, because I think it is better to get it disposed of when the public has recently been informed that this great commission that was really anxious to tell the truth but was afraid to recommend, although it would like to have recommended, actually did come out in opposition to measures of this kind. I should like the opportunity not to filibuster on the bill or to talk on it at length but to vote against it. Therefore I shall vote to take it up.

Mr. TYDINGS. Mr. President——

Mr. BINGHAM. I yield.

Mr. TYDINGS. I would not for a minute question the fine, pure motives of the Senator from Connecticut; but, knowing his great opposition to the Philippine bill, I was wondering whether he was not, even though unwittingly, using this measure as a sort of a filibuster against the Philippine independence bill.

Mr. BINGHAM. No, Mr. President; I shall not filibuster against the Philippine bill; and since the Senator from Maryland, while saying that he did not question my motives, has actually questioned them, I shall justify his opinion in this regard—that if we get this measure up, I shall move as an amendment to it an amendment to the Volstead Act changing the content of legal beverages from one-half of 1 per cent to 4 per cent. That was really my reason for hoping that we could get the bill up.

Mr. BORAH. Mr. President, this bill is one of the bills reported out by the steering committee. The other one is the Philippine independence bill.

It will, perhaps, take six weeks to dispose of the Philippine independence bill and it will take two or three weeks to dispose of this bill. Of course, I am not disposed to question the good faith of the steering committee; but it would be interesting to know why these two measures were put out here to be disposed of at this session, when I suspect there is not a Senator who thinks that either one of them can be disposed of at this session.

Mr. BROOKHART. Mr. President——

Mr. BORAH. Personally, I am in favor of a special session; but I did not suppose that the steering committee was.

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. BORAH. I do.

Mr. BROOKHART. That was the question I desired to ask the Senator.

Mr. BORAH. I am going to vote against taking up this measure, and I am going to vote against taking up the Philippine measure, because they are the kind of measures that we can not dispose of at the short session. There are some things that we might well do; and I trust the steering committee will reflect, and bring out some measures in which we are deeply interested and of which we can dispose.

Mr. WATSON. Mr. President, it will be recalled that before the holidays the Senator from Nebraska [Mr. HOWELL], standing down here, insisted on having a vote on his proposition. That is to say, he insisted on putting it on the program; and he asked at that time to have it taken up.

There was much altercation at the time. We were anxious to get away; and at that time a number of promises were made to the Senator that if he would desist then, and permit his matter to be laid aside, after the holidays the gentlemen making these promises would help him get it up for debate.

Some Senators who were against the measure at that time made those promises to the Senator from Nebraska. Some of the members of the steering committee, acting not as steering committee members but as individual Senators, made promises at that time that they would help him get the matter up for discussion; and a promise made under those conditions is a promise that ought to be kept.

That is how this matter happened to be brought up at this time. So far as I am concerned, I intend to vote against taking up the bill; but I do believe in giving the Senator an opportunity to have it brought up, to be tested by this body at this time, or as soon as we get ready.

Mr. BORAH. Mr. President——

Mr. WATSON. I yield.

Mr. BORAH. I think I can follow the Senator from Indiana in that course. He proposes not to bring up the bill but to let those who made the promise try to bring it up.

Mr. WATSON. That is about all there is to it; and I am not one of them.

The VICE PRESIDENT. The question is on the motion of the Senator from Nebraska [Mr. HOWELL].

Mr. ASHURST. I call for the yeas and nays.

Mr. GOFF. Mr. President, I merely wish to say, in confirmation of what the Senator from Indiana has stated, that the facts are as he refers to them. The matter came up before the steering committee, and the Senator from Nebraska [Mr. HOWELL] appeared and made a statement substantially as the Senator from Indiana has said, and the committee reported the bill out.

Mr. BRATTON. I call for the years and nays.

The VICE PRESIDENT. Is the demand seconded?

Mr. HOWELL. Mr. President, I did not intend to debate this bill at this time. The bill has been before the Senate for a year. The Nation believes there is some intention to enforce prohibition in the District of Columbia. The President asked that this bill be considered. It is not merely my request. It is also the desire of the Attorney General.

In September last I happened to make a reference to conditions in Washington. I called the attention of the Senate to the fact that there was no other political subdivision of the United States wherein there was the opportunity for enforcing prohibition that there is here in the District of Columbia.

Mr. BARKLEY. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Kentucky?

Mr. HOWELL. Pardon me just a moment.

The VICE PRESIDENT. The Senator declines to yield at present.

Mr. HOWELL. Here in the District of Columbia the President appoints, directly or indirectly, every executive official. In view of that fact, it must be apparent that with one-man control of that kind this is the most favorable place in the United States to determine whether or not prohibition can be enforced. If it is not wished to determine this, all well and good; but in view of the fact that this

matter has been pending for a year, and finally we have reached the point where consideration can be given, are we going to say that we do not care anything about what the conditions are in the District of Columbia?

Mr. TYDINGS. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Maryland?

Mr. HOWELL. Just a moment.

The VICE PRESIDENT. The Senator declines to yield.

Mr. HOWELL. We are all aware that the national prohibition act was designed to supplement local prohibition acts.

Mr. WATSON. Mr. President, will the Senator yield there? I should like to ask the Senator a question for information or to get his opinion.

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Indiana?

Mr. HOWELL. I do.

Mr. WATSON. Is there anything in the report of the Wickersham Commission that runs counter to the provisions of the Senator's bill?

Mr. HOWELL. There is not, except that it might be urged, for instance, that a provision in this bill for increasing the powers of search might contravene the recommendations of the Wickersham Commission; but it does not, in fact. That was a recommendation respecting the entire country. The provision in the bill which I have introduced will be merely a police regulation in the District of Columbia—that is all—a police regulation that is necessary.

Mr. TYDINGS. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Maryland?

Mr. HOWELL. I yield for a question.

Mr. TYDINGS. I desire to ask the Senator a question, and I hope he will take it in good spirit, because I am asking him very sincerely. Does the Senator feel that there is any chance of his motion being voted on this afternoon?

Mr. HOWELL. I doubt it. I do not expect it to be voted upon this afternoon.

Mr. TYDINGS. May I suggest to the Senator, with all courtesy, that he himself permit his motion to be voted on in the very near future, if I am not too presumptuous?

Mr. HOWELL. Possibly the Senator from Maryland will explain his position and why he asks this question.

Mr. TYDINGS. Yes; because I am very much interested in the matter and was on the committee, and I am forced to be absent. I want to stay if there is any chance of a vote being reached this afternoon, but I do not want to stay if there is no chance of a vote being reached this afternoon. That is as frankly as I can put the matter.

Mr. HOWELL. Mr. President, so far as voting on the question of taking up the bill is concerned, of course I want a vote just as soon as we can get it. When it comes to the question of the passage of the bill I want the Senator to have ample time for discussion. I do not ask anybody to surrender any right. I have tried to be courteous to everyone who is opposed to this bill, as well as to those who have favored it.

Mr. TYDINGS. If the Senator will yield for another question——

Mr HOWELL. I yield.

Mr. TYDINGS. I might suggest to him that if he would permit a vote to come we could have a vote now, in my judgment at this moment, on the question of taking the bill up.

Mr. HOWELL. Mr. President, I am very sorry, but I feel that because of remarks which have already been made by those who are opposed to taking up the bill we should consider some of the features of the bill, its genesis, and why I am urging its adoption.

Mr. TYDINGS. Will the Senator yield for one more observation?

Mr. HOWELL. I yield.

Mr. TYDINGS. I want to be fair with the Senator, and I do not want to use dilatory tactics to prevent taking up the bill, but if we can not get a vote on this question now I may say to the Senator that it is doubtful whether we can pass on the entire question at this session of Congress.

Mr. HOWELL. Mr. President, it is very evident that there are those who do not care to have legislation of this character, but there is a necessity which presents itself here in the District of Columbia.

As I stated, in September a year ago I referred to the fact that it was possible to enforce prohibition in the District of Columbia because the President was all-powerful within the District. I asserted at that time that the reason why prohibition was not enforced here was because there was not the will to enforce it.

Subsequently the President in an interview stated that he did not believe I would have made representations respecting liquor violations here in the District of Columbia unless I were able to give times and places of violations, and he invited me to do so. Some two days later I gave times and places here on the floor, times and places to which apparently no attention has been paid whatever. I took the suggestion of the President rather seriously. I had no idea of giving attention to this particular legislation at that time. As a consequence I began to investigate conditions in the District of Columbia, and the question is, Does the Nation want these conditions to continue? Is Congress willing to do something to stop them as a result of my investigations?

Mr. President, I found that the Board of Commissioners, the governing body of the District of Columbia, had no legal concern respecting the enforcement of prohibition, nor was the board anxious for any.

I found that 1,262 of the 1,300 Washington policemen—97 per cent—had no duties whatever in connection with liquor violations, except the apprehension of intoxicated motorists and pedestrians.

I found that but four police officers, supplied with one automobile of uncertain vintage, were detailed to stop bootleg liquor filtering into Washington by the 24 highways leading into the city.

I found that of the hundreds of Federal agents of the Prohibition Unit, not more than three or four were actually on duty in the Nation's Capital.

I found that there were justifiable complaints because of the restoration of policemen to the District pay roll after suspension for drunkenness while on duty; because of the appointment to and maintenance in office of enforcement personnel unquestionably wet—both personally and constitutionally; because of the congestion of the court dockets.

I found complaints because of a not unusual attitude on the part of some judges to give defendants better than a sporting chance by leaning backward in prohibition cases, to say nothing of a manifest tendency to multiply the technical hazards of the judicial golf course to such an extent as to render it difficult and often impossible for prosecutors to secure convictions for patent liquor violations.

I found that bootleggers freely maintained storages of liquor in the city without interference.

I found that not only was Washington a virtual sanctuary for stores of bootleg liquor, but that, professionally, high-class bootleggers led a charmed life, while the hazard of the common garden variety was nominal, as evidenced by the 10-year record of one offender—number of liquor violations charged, 54; time served in jail, not one day; forfeitures and fines paid, $390, or at the rate of $39 per annum—a moderate occupation tax indeed.

I found that, contrary to law and the Constitution as set forth in opinions filed by the Department of Justice, persons of diplomatic status were securing the unlawful delivery in Washington of hundreds of thousands of quarts of liquor annually by virtue of permits and protection afforded by the executive branch of the Government.

I found that one person claiming diplomatic status, but not residing in a legation, had thus procured the unlawful delivery on his premises of more than 5,000 quarts of wine, brandy, and whisky in one year.

I found that diplomatic status had been successfully invoked for the release of a Washington negro arrested on the street for possession and transportation of whisky ad-

mitted to be his own. He stoked the furnace and did other janitorial jobs at one of the legations.

I found that from one foreign distillery there was unlawfully delivered in Washington, by virtue of Executive permits and protection, some 13,000 quarts of diplomatic whisky within a period of three months—the equivalent of 20 quarts for every diplomatic official and the members of his family, including also maids, cooks, laundresses, chauffeurs, and janitors enjoying diplomatic status in the city.

I found that a local entertainment committee, appointed in connection with a large convention recently held in Washington, deemed it necessary, as stated by one of its members, to budget 9,000 quarts of liquor for the delectation of delegates. Service was rendered upon telephone orders by an "official bootlegger" and his half-pint assistants. Delegates and nondelegates alike (excepting, of course, law-enforcement officials) had knowledge of or freely obtained the bootlegger's number from the chairman, if not from other members of the entertainment committee.

Mr. TYDINGS. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Maryland?

Mr. HOWELL. I yield.

Mr. TYDINGS. I take it the Senator feels the penalties are not severe enough to break up this practice?

Mr. HOWELL. The trouble is that we have no local enforcement law in the District of Columbia.

Mr. TYDINGS. I was going to say to the Senator in all earnestness and seriousness, that when his bill comes up I am going to offer an amendment to make persons violating the prohibition law subject to life imprisonment, so that we can either hang them or put them away during life, and thus end this lawlessness.

Mr. HOWELL. Mr. President, it is very evident that there are several views entertained respecting the enforcement of prohibition in the District of Columbia, some rational, and some irrational. However, I took the President's suggestion of investigating or finding out something about the enforcement of prohibition in this District seriously, and I am stating facts.

I found that the hotels of the city, and especially the great hostelries, were hotbeds of liquor violations with never a raid or a prosecution of the principals involved. Evidence of this is contained in the police records and files of the Prohibition Unit involving the Wardman Park, Carlton, Mayflower, New Shoreham, and Annapolis Hotels.

I found that it seemed to be the notion here in the Nation's Capital, possibly uncrystallized in the minds of many, that prohibition is for the masses, not for rank, wealth, and others willing to pay cover charges.

I found that it was the little fellow upon whom the majesty of the law was concentrating.

That is the great trouble with prohibition enforcement.

Mr. TYDINGS. Mr. President, will the Senator yield further?

Mr. HOWELL. I yield.

Mr. TYDINGS. I would like to ask the Senator what proportion of the people of Washington he believes, from his investigation, are violating the prohibition law.

Mr. HOWELL. My investigations were not sufficient to enable me to answer a question of that character.

Mr. TYDINGS. If I may attempt to point out something in answer to my own question, the Senator brought forth the fact that hundreds of thousands of quarts of liquor were imported into Washington each year, and it looks to me as if what the Senator really has proven is that the people of Washington themselves do not want the law which he wants them to have.

Mr. HOWELL. Mr. President, I did not say that there were hundreds of thousands of quarts of liquor imported into Washington for the people of Washington. What I said was that there were hundreds of thousands of quarts annually imported into Washington by merely those claiming a diplomatic status.

Mr. TYDINGS. There are only about 15 or 20 embassies here and those fellows must be on a perpetual spree if they consume all that liquor. [Laughter.]

Mr. HOWELL. Mr. President, after much effort, I finally secured a list of the certificates which have been issued certifying diplomatic status for the purpose of securing permits from the Secretary of the Treasury to introduce liquor into Washington. I am not drawing on my imagination. I am stating facts.

Mr. TYDINGS. Mr. President——

Mr. HOWELL. I found that the sort of violations I have indicated was going on here in this city. Yet there are those who talk about making this a model city. This can not be made a model city unless a beginning is made at the top—not by prosecuting the little fellow only.

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Maryland?

Mr. HOWELL. I yield.

Mr. TYDINGS. Does the Senator think that the passage of a mere law will cause those who are now charged with enforcing it to begin at the top?

Mr. HOWELL. It is my opinion that there should be no partiality in the enforcement of law.

Mr. TYDINGS. I am not taking issue with the Senator's observation. I think it is a fair and correct one and that the law should be enforced that way, but he has more faith in changing human nature simply by the enactment of a law than I feel is warranted.

Mr. HOWELL. We should do all that is necessary for reaching the man at the top. We should not merely have a law which catches in our nets the little fellow, and that is why I am standing here advocating the passage of this bill. I stand for uniformity. If we do not enact such a law, we simply perpetuate the conditions which are existing in this community right now to-day.

Mr. TYDINGS. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Nebraska yield further to the Senator from Maryland?

Mr. HOWELL. Not now, but later I shall be glad to answer the Senator's questions.

The VICE PRESIDENT. The Senator declines to yield.

Mr. HOWELL. Mr. President, I invite your attention to one thing that, in my opinion, is the shame of Congress. I found that panderers in Washington can ply girls of tender age with liquor, and do so wholly unafraid. It is the shame of Congress that such offenses against minors are not punishable in the District of Columbia.

After making investigations, after gathering data upon which these statements are based, I then asked the question, What is the matter? I am frank to say that I confined myself in my inquiries to the Prohibition Unit, to the police department, to the corporation counsel, to those who have in charge the enforcement of prohibition in this city. The chief answer was that the national prohibition act was designed to supplement local prohibition acts. We had a local prohibition act in the District of Columbia until 1920 when by implication—not by direction of Congress, but by implication—it was repealed or it has been held that it was repealed, and since that time the District of Columbia has been without local police laws respecting the liquor violations. When I found that such was the situation, it struck me at once that the proper thing to do was to prepare a bill to meet the situation.

The first bill considered was deemed to be too inclusive, so that was abandoned and another bill was drawn. The second bill was submitted to the Prohibition Unit, to the chief of police, to the corporation counsel, to the officials here who are engaged in the enforcement of prohibition so far as it is enforced in the District of Columbia. Finally, after incorporating their views, the bill was referred to the Attorney General for his criticism. After some time the Attorney General sent me a redraft of the bill, and the bill which is now before the Senate is the redraft submitted by the Attorney General and which he thoroughly approves, with the exception of one or two matters in section 10 of the measure.

The question is, What are we going to do about it? Have we any regard for conditions that exist in the District of Columbia? The President has urged the passage of the measure or the measure as approved by the Attorney General. The Attorney General has said that such a measure is necessary. Are we going to say to the country, Yes, enforcement officials demand a measure of this kind, but that we will not enact it? Why? Because there are some in the Senate who would be opposed to any bill enforcing the prohibition of liquor. There is just one thing for us to do if we want to aid in enforcing the law in this community, and that is to pass this bill—make it a part of the judicial code of the District of Columbia. Those who are opposed to doing so, of course, will oppose the mere consideration of the measure, to say nothing of its ultimate passage.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Arkansas?

Mr. HOWELL. I yield.

Mr. ROBINSON of Arkansas. I have read in the press reports that the Attorney General is of the opinion that certain provisions in the bill of the Senator from Nebraska relating to search and seizure of private homes are unconstitutional. Does the Senator intend to modify those provisions?

Mr. HOWELL. In answering that question I shall have to give my reasons. The provision for the search of homes contained in the bill was not a suggestion of mine. I found that in Montgomery County and in Prince Georges County, Md., and in Virginia, the territory surrounding the District of Columbia, a search warrant covering a private dwelling could be obtained for the mere possession of liquor for sale. But the District of Columbia is an oasis for the bootlegger. A similar search warrant can only be obtained in the District upon evidence of a sale having been made in such a private dwelling.

The technique which has been developed by the bootlegger is this: The bootlegger rents an apartment and stores his liquor in that apartment. He has an office elsewhere. His customers telephone him, and after he has identified them he then relays the message to his storage place and the liquor is delivered from there.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator yield further?

The VICE PRESIDENT. Does the Senator from Nebraska yield further to the Senator from Arkansas?

Mr. HOWELL. I yield.

Mr. ROBINSON of Arkansas. I do not think the Senator's answer is responsive to the question I asked.

Mr. HOWELL. I shall be responsive in the end. I want to give the reasons why the provision is in the bill and to what extent it applies. There has been a great deal of misstatement as to the purport of this measure.

Mr. ROBINSON of Arkansas. What I am trying to ascertain now is whether the Senator concedes that the provision may be violative of the Constitution or whether he contends it is in conformity with the Constitution.

Mr. HOWELL. So far as search and seizure are concerned, it is in conformity with the Constitution. The Attorney General made no objection to it upon that ground at all. What the Attorney General said was that he thought it was not wise—it was inexpedient—to attempt to enact a law having added provisions for search and seizure. No; not for a moment has the Attorney General ever suggested to me that there is any question in his mind as to the constitutionality of the search and seizure provision in the bill.

Now, what is the search provision? As I have stated, the bootlegger maintains his supply of liquor in a private dwelling or apartment. He never makes a sale there. As a consequence, we can not secure a search warrant for that dwelling or apartment, although we know and can make affidavit that there are a thousand quarts of liquor stored in the apartment. Such knowledge is of absolutely no use under the national prohibition law. But in Prince Georges County or in Montgomery County, Md., and across the river in Virginia the mere possession of such liquor would subject the private dwelling or apartment to search. As a consequence, the District of Columbia, 10 miles square, is a sanctuary for the bootlegger in this section of the country. How are we going to reach that situation?

Mr. TYDINGS. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Maryland?

Mr. HOWELL. I yield.

Mr. TYDINGS. Let me say to the Senator that if he can say of his own observation that in a certain house there are a thousand quarts of liquor stored, he can get a search warrant very easily in the District of Columbia and he does not need any supplemental law at all. What the law did intend to prevent was having arrests made on pure suspicion, and only to allow search warrants to be issued where affidavit could be made of real violations of the law.

Mr. HOWELL. The national prohibition act is explicit. A search warrant can not be obtained for a private dwelling unless one has evidence of a sale having been made in that dwelling. The kind of evidence which the courts have been demanding is such as must be obtained in the following manner: An informer is searched by two police officers before he enters a dwelling. He is furnished with marked money. He is then sent into the dwelling, where he purchases the liquor with the marked money. Having done so, he gets out as early as possible with a sample of the liquor purchased. Then they secure a warrant and raid the place and get the marked money. That is what they have to go through in order to get a search warrant for a bootlegger's cache in the District of Columbia.

Mr. TYDINGS. Am I to understand the Senator to say that this great and true and pure Government of ours is actually taking the taxpayer's money to connive at crime, that Government officials are using it to commit crime and to buy liquor illegally? Does he mean to say that the taxpayer's money is being used by agents of the Government to induce people to sell liquor in violation of the law?

Mr. HOWELL. It is very easy to pile up theoretical objections to the methods that are necessary to apprehend criminals. If a man steals a dollar, the law goes the limit; but if a man is making a fortune out of his bootleg cache in the District of Columbia, the law protects him. I insist that that is not the function of the laws enacted for the enforcement of prohibition. What is needed is a little common sense, law equity.

Mr. TYDINGS. Mr. President, will the Senator yield further?

Mr. HOWELL. I yield.

Mr. TYDINGS. Am I to understand that the Senator advocates the idea that if a certain man is supposed to be a burglar it would be a fine thing for a police officer to go around and entice that man to break into some department store so he could catch him red-handed with the goods?

Mr. HOWELL. The Senator's example is not a parallel at all.

Mr. TYDINGS. Why not?

Mr. HOWELL. It is not a parallel at all. It is typical, I am sorry to say, of the specious arguments that have been brought and used against the enforcement of prohibition. There are those who do not think prohibition ought to be enforced and they are in hopes that violations of the prohibitory law may become so general that their wish for a repeal of the eighteenth amendment may be consummated. So specious arguments are broadcast to the winds and thus violations are indirectly encouraged.

But here in the District of Columbia, where the President is all powerful, that there should be no code of police laws regulating these matters, and that enforcement should be dependent wholly upon the national prohibition act, which does not take into consideration local conditions, it seems to me that the situation created is a wholly untenable one, and that Congress ought to rectify it at once.

Mr. TYDINGS. Mr. President, will the Senator yield to me?

The VICE PRESIDENT. Does the Senator from Nebraska yield further to the Senator from Maryland?

Mr. HOWELL. I yield.

Mr. TYDINGS. So far as I am concerned, I would be willing to see the Senator's bill passed exactly as it is if he would consent under the proper machinery to have a referendum upon the measure by the citizens of the District of Columbia who live here and are over 21 years of age, for I am confident they would reject the Senator's bill by nearly 3 to 1. If the Senator wants to meet the test he can get rid of a good deal of opposition by accepting that program.

Mr. HOWELL. Mr. President, so far as referenda are concerned, I have no fear whatever of them when the public can be informed, but one of the unfortunate situations that confronts the public in the eastern portion of the United States is the number of publications which are against prohibition.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. HOWELL. There is not the possibility of getting dry facts respecting prohibition to the people. The only way the people can act and act judiciously and wisely and intelligently is for them to have the facts. It will be found there is not a newspaper in this city that favors prohibition.

Mr. TYDINGS. Mr. President, will the Senator yield? I take issue with him.

Mr. HOWELL. And the publication by those newspapers of views in opposition to prohibition, of course, has had its effect. But do not think for a moment that there is any chance for the repeal of the eighteenth amendment. The sentiment of this country in the Middle West, where large cities do not prevail, is such that they will never allow the repeal of the eighteenth amendment.

Mr. TYDINGS. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Maryland?

Mr. HOWELL. I yield.

Mr. TYDINGS. As I understand, the Senator is only in favor of referenda where newspapers are not published, but wherever it is possible to have newspapers published the Senator feels that it is bad to have a referendum on this subject.

Mr. HOWELL. No; the Senator has misstated my position absolutely. We have newspapers everywhere; but we are confronted in the District of Columbia, naming a specific place, with the fact that the press is in favor of the repeal of the eighteenth amendment; and how are we to reach the people?

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. HOWELL. No; I will not yield at this time. How are we to reach the people? We can only reach the people by a propaganda conducted from nonprofessional sources; and where is the money to come from?

Mr. TYDINGS. Mr. President, will the Senator yield there?

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Maryland?

Mr. HOWELL. We know the difficulty of securing money even in the West for a progressive campaign. There is no chance of getting to the people the facts respecting prohibition as they should be taken to them.

Mr. TYDINGS. Mr. President, will the Senator yield there?

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Maryland?

Mr. HOWELL. I yield.

Mr. TYDINGS. I want to correct a misstatement which I think the Senator inadvertently made. In the first place, the press of Washington is not in favor of the repeal of the eighteenth amendment. I have been a reader of the Washington Evening Star for 8 or 10 years, and I have never seen a line in that newspaper, editorial or otherwise, which indicated that it was not in accord with the general prohibition act. That newspaper has the largest circulation, I think, of any newspaper in Washington.

The advocates of prohibition also have the churches which believe in prohibition, and they have access to the radio equal to that accorded anybody else. I am really disappointed that the Senator has so little faith in the intelligence of the people of Washington as to think they can not be trusted to settle the question and pass upon a law under which they themselves must live. God help the Nation if that is the condition that exists in the National Capital!

Mr. HOWELL. Mr. President, the people of this city now have the opportunity of enjoying the most efficient government of all the municipalities of this country. It is not a plan that I would approve for every city in the land, but the fact is that it has all the elements of a managerial form of government.

Mr. TYDINGS. Will the Senator yield to me for just a moment?

Mr. HOWELL. Not at present. It has all the elements of a managerial form of government—the most desirable form of organization for municipal efficiency. I understand there are those who would like to have the District of Columbia a self-governing community; but that has not been and probably will not be. However, Congress is here; it has a duty to perform, a dual duty, a duty respecting the prohibition statutes for the entire country and a duty as the legislature of the District of Columbia to provide police regulations for this city.

Mr. TYDINGS. Will the Senator yield there?

Mr. HOWELL. Not just at present. What I am appealing for now is the enactment of a law that will enable the law officers of this city effectively to enforce prohibition in Washington.

Mr. TYDINGS. Will the Senator yield there for one question, and then I will not interrupt the Senator any more?

Mr. HOWELL. I will not yield at present.

Mr. TYDINGS. I merely want to ask one question, and I will not interrupt the Senator any more.

Mr. HOWELL. When I am through I will be glad to yield the floor to the Senator.

The PRESIDENT pro tempore. The Senator from Nebraska declines to yield.

Mr. HOWELL. So far as the search-and-seizure provisions in this bill are concerned, they are not equal in severity to the search-and-seizure provision in the law which was in effect in the District of Columbia from 1917 to 1920. The law then in force was the Sheppard Act, which was a local police regulation respecting liquor in this city. All the pending bill provides respecting search and seizure, and to which the Attorney General objects, is that if there is evidence of a still being unlawfully set up in a private dwelling, or of being unlawfully operated for the production of liquor, in such case, when there is evidence of the fact, a search warrant may be obtained to search the house, though it may be a private dwelling. Under present circumstances a policeman walking through a yard on private property may see a still in full operation, but he can not obtain a search warrant for that dwelling. That is the situation that exists here in the District of Columbia.

Another provision is that a search warrant may be secured where liquor is being delivered to a private dwelling for sale. At the present time under such circumstances a search warrant can not be obtained.

The bill also provides that a search warrant may be issued if liquor is being unlawfully removed from a private dwelling.

As I have stated, the purpose of these provisions is to defeat the technique of the bootlegger in the city of Washington. To-day his supplies of liquor are protected. As I have already stated, a policeman may know there are a thousand quarts of liquor in a private dwelling, but unless he can obtain evidence of a sale within that private dwelling he can not secure a search warrant and under such circumstances the bootlegger is perfectly safe in storing his liquor.

Mr. President, how are we going to meet this situation? Do we want to enforce prohibition or do we not want to enforce prohibition? Do we want to make Washington a sanctuary for the bootlegger or do we want to make it a

place where he does not care to do business? Under present conditions Washington is a sanctuary for the bootlegger.

Furthermore, Mr. President, do you not think we ought to do something to protect minors within the jurisdiction of the District of Columbia? Out of the 49 political subdivisions in the United States, the District of Columbia is 1 of the 5 that has no local prohibition law. While I am not familiar with all State laws respecting minors, I dare say that in every other political subdivision in the United States a man who plies a girl of tender years with liquor can be prosecuted because of his act, but here in Washington such things can be done with impunity.

My attention was called by a mother to an attempted rape upon her daughter, 15 years of age, at the Wardman Park Inn. The facts were these: She was taken there in company with two young single men, one married man, and two other girls; that the married man produced liquor; that she was given liquor; that she became ill; and when the other members of the party happened to be out of the room where she was lying on the bed, one of the young men happened to return and attempted to rape her.

Mr. President, that occurred about two years ago, and the man who was subsequently indicted has not yet been tried; and when the suggestion was made that the married man who gave liquor to this young girl should be prosecuted, I was assured by the United States district attorney that he would not prosecute anyone for the possession of a pint of liquor. It was upon that occasion I learned for the first time that it was no special offense to ply minors with liquor in the District of Columbia.

In view of these facts, Mr. President, it seems to me that the United States Senate can afford to consider legislation of this character. It should have been considered a long time ago. The mere fact that we are in the midst of a short session is no reason, in my opinion, why this bill should not be considered, because I believe it involves matters of outstanding importance. It is of interest to the whole Nation, as action of the Senate will be indicative of its attitude toward liquor violations of a flagrant character.

The PRESIDENT pro tempore. The question is on agreeing to the motion proposed by the Senator from Nebraska [Mr. HOWELL].

Mr. HOWELL. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Deneen	Kean	Pittman
Barkley	Dill	Kendrick	Reed
Bingham	Fess	Keyes	Robinson, Ark.
Black	Fletcher	La Follette	Sheppard
Blaine	Frazier	McGill	Simmons
Borah	George	McKellar	Smith
Brock	Gillett	McMaster	Smoot
Bratton	Goff	McNary	Steiwer
Brookhart	Goldsborough	Metcalf	Stephens
Broussard	Hale	Morrison	Thomas, Okla.
Bulkley	Harris	Morrow	Trammell
Capper	Hastings	Moses	Tydings
Carey	Hatfield	Norbeck	Vandenberg
Connally	Hawes	Norris	Walsh, Mass.
Copeland	Heflin	Nye	Walsh, Mont.
Couzens	Howell	Oddie	Watson
Cutting	Johnson	Partridge	Wheeler
Dale	Jones	Phipps	Williamson

The PRESIDENT pro tempore. Seventy-two Senators have answered to their names. A quorum is present.

Mr. GEORGE. Mr. President, on the 7th of January the Senators received a personal letter from the chairman of the steering committee of the Republican Party, in which we were advised that this bill, Order of Business 747, was given preferential status on the calendar. That is to say, the steering committee recommended that this bill, of four other measures, be taken up first.

I entertain some misgivings about the ability of the Senate to pass the measure, and particularly about its passage in the House, before the 4th of March. However, I think I have the right to assume that the administration may be able to get consideration of this measure in the House, and possibly bring about its favorable consideration by the 4th of March.

While I must confess that I have some misgivings about the passage of this measure through both bodies by that time, nevertheless I think I am justified in voting for the motion now made by the Senator from Nebraska [Mr. HOWELL] to take up the bill. The steering committee having given it this preferential status, which I must assume indicates the desire of the administration that the matter be taken up at this time, and carries something in the nature of an assurance of its prompt consideration by the House before March 4, I feel that, so far as I am concerned, I should vote in line with the recommendations made by the steering committee of the majority, and with the Senator from Nebraska.

Therefore I shall vote to take up the bill at this time.

The PRESIDENT pro tempore. The question is on agreeing to the motion proposed by the Senator from Nebraska [Mr. HOWELL].

Mr. TYDINGS, Mr. SMOOT, and other Senators called for the yeas and nays, and they were ordered.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. HASTINGS (when his name was called). On this question I have a pair with the senior Senator from Mississippi [Mr. HARRISON]. Not knowing how he would vote, I withhold my vote.

Mr. THOMAS of Oklahoma (when his name was called). On this question I have a pair with the junior Senator from Illinois [Mr. GLENN]. Not knowing how he would vote if present, I withhold my vote. If privileged to vote, I would vote "yea."

Mr. WHEELER (when his name was called). On this question I have a pair with the junior Senator from Idaho [Mr. THOMAS]. I transfer that pair to the junior Senator from Arizona [Mr. HAYDEN] and vote "yea."

The roll call was concluded.

Mr. BINGHAM. I have a general pair with the junior Senator from Virginia [Mr. GLASS]. In his absence, not knowing how he would vote, and not being able to obtain a transfer, I withhold my vote. If permitted to vote, I would vote "yea."

Mr. FESS. I desire to announce the following general pairs:

The Senator from Colorado [Mr. WATERMAN] with the Senator from Virginia [Mr. SWANSON];

The Senator from Rhode Island [Mr. HEBERT] with the Senator from Iowa [Mr. STECK];

The Senator from Missouri [Mr. PATTERSON] with the Senator from New York [Mr. WAGNER]; and

The Senator from Maine [Mr. GOULD] with the Senator from South Carolina [Mr. BLEASE].

I do not know how any of these Senators would vote if present and permitted to vote.

Mr. COPELAND. I desire to announce that my colleague [Mr. WAGNER] is necessarily absent. If present, he would vote "nay."

Mr. McKELLAR (after having voted in the affirmative). Mr. President, I inquire whether the Senator from Delaware [Mr. TOWNSEND] has voted?

The PRESIDENT pro tempore. That Senator has not voted.

Mr. McKELLAR. I have a pair with the Senator from Delaware, which I transfer to the junior Senator from Arkansas [Mr. CARAWAY], and allow my vote to stand.

Mr. STEPHENS. I have a pair with the junior Senator from Indiana [Mr. ROBINSON]. I understand that if that Senator were present he would vote "yea." If permitted to vote, I should vote "nay."

The result was announced—yeas 39, nays 29, as follows:

YEAS—39

Ashurst	Fess	Howell	Robinson, Ark.
Barkley	Fletcher	Jones	Sheppard
Black	Frazier	Kendrick	Simmons
Brock	George	McGill	Smith
Brookhart	Goff	McKellar	Trammell
Capper	Goldsborough	McMaster	Vandenberg
Connally	Hale	Morrison	Walsh, Mont.
Dale	Harris	Norris	Wheeler
Deneen	Hatfield	Nye	Williamson
Dill	Heflin	Partridge	

NAYS—29

Blaine	Cutting	Metcalf	Smoot
Borah	Gillett	Morrow	Steiwer
Bratton	Hawes	Moses	Tydings
Broussard	Johnson	Norbeck	Walsh, Mass.
Bulkley	Kean	Oddie	Watson
Carey	Keyes	Phipps	
Copeland	La Follette	Pittman	
Couzens	McNary	Reed	

NOT VOTING—23

Bingham	Harrison	Ransdell	Swanson
Blease	Hastings	Robinson, Ind.	Thomas, Idaho
Caraway	Hayden	Schall	Thomas, Okla.
Davis	Hebert	Shipstead	Townsend
Glass	King	Shortridge	Wagner
Glenn	Patterson	Steck	Walcott
Gould	Pine	Stephens	Waterman

So the motion was agreed to; and the Senate proceeded to consider the bill (S. 3344) supplementing the national prohibition act for the District of Columbia, which had been reported from the Committee on the District of Columbia with amendments.

Mr. BINGHAM submitted an amendment in the nature of a substitute intended to be proposed by him to the bill (S. 3344) supplementing the national prohibition act for the District of Columbia, which was ordered to lie on the table and to be printed.

PROPOSED CHANGES IN CLAYTON ACT

Mr. NYE. Mr. President, I desire to give notice that as near 2 o'clock to-morrow as it is possible for me to obtain the floor I shall address the Senate on proposed changes in the Clayton Act.

RECESS

Mr. McNARY. I move that the Senate take a recess until 11 o'clock to-morrow.

The motion was agreed to; and the Senate (at 4 o'clock and 50 minutes p. m.) took a recess until to-morrow, Saturday, January 24, 1931, at 11 o'clock a. m.

CONFIRMATIONS

Executive nominations confirmed by the Senate January 23 (legislative day of January 21), 1931

UNITED STATES MARSHALL

Albert W. Harvey, district of Vermont.

POSTMASTERS

ALABAMA

Fred M. Fitts, Alabama City.
Warren L. Hollingsworth, Lincoln.
Fred D. Perkins, Wetumpka.

COLORADO

Henry J. Stahl, Central City.
Clarence E. Wright, Lake City.
Dixon D. Pennington, Victor.

IDAHO

George T. Hyde, Downey.
Myron A. Corner, Wallace.

KANSAS

Lewis Thomas, Argonia.
Nellie C. Preston, Buffalo.
Hester Goldsmith, Cheney.
William D. Hale, Dexter.
Carl O. Lincoln, Lindsborg.

KENTUCKY

George T. Joyner, Bardwell.
Robbie M. Ray, Columbus.
Rufus L. Wilkey, Clay.
Samuel E. Torian, Gracey.
James H. Branstetter, Glasgow.
Albert L. Canter, Lynnville.
Jasper N. Oates, Nortonville.
Oscar W. Gaines, Oakland.
William E. Jones, Princeton.
Elizabeth T. Peak, Waverly.
Eugene E. Johnson, White Plains.
James A. Miller, Wickliffe.
Armp B. Byrn, Wingo.

MASSACHUSETTS

Everett C. Crane, Avon.
Guy W. Sanborn, Byfield.
Erastus T. Bearse, Chatham.
Merritt C. Skilton, East Northfield.
Augustus J. Formhals, Erving.
Carl D. Thatcher, Housatonic.
Thomas Smith, North Grafton.
Elmer E. Landers, Oak Bluffs.
Robert H. Howes, Southboro.
Amasa W. Baxter, West Falmouth.
Henry J. Porter, Wilmington.
George H. Lochman, Winchester.

MICHIGAN

Herbert E. Ward, Bangor.
Robert Wellman, Beulah.
John H. Porter, Boyne Falls.
William J. Putnam, Goodrich.
Arthur Locke, Middleton.
William C. Thompson, Midland.
Frank B. Housel, St. Louis.
Charles A. Jordan, Saline.
Rob C. Brown, Stockbridge.
Fred Lutz, Warren.

MINNESOTA

John T. Orvik, Nielsville.

MISSISSIPPI

Thomas W. Maxwell, Canton.
George E. Cook, Clarksdale.
William P. White, Smithville.

NEBRASKA

Alfred W. Cosson, Amherst.
Ross L. Douglas, Litchfield.

NEW YORK

Ethel C. Smith, Adams Center.
Guy M. Lovell, Camillus.
William S. Finney, Cayuga.
Floyd C. Buell, jr., Cherry Creek.
Edna Frisbee, Conewango Valley.
Mary H. Avery, Elmsford.
Wayland H. Mason, Fairport.
Adolph N. Johnson, Falconer.
William D. Creighton, Fort Covington.
Wade E. Gayer, Fulton.
Sister Mary M. McCue, Gabriels.
Earl W. Kostenbader, Groton.
James H. Layman, Haines Falls.
John C. Banschbach, Hicksville.
George W. Van Hyning, Hoosick Falls.
George F. Yaple, Loch Sheldrake.
Henry S. Whitney, Manlius.
Burton E. McGee, Norfolk.
Nicholas Duffy, Port Chester.
Thomas S. Spear, Sinclairville.
Fred C. Smith, Vernon.
Henry Neddo, Whitehall.
Margaret D. Martin, Willard.
Lester B. Dobbin, Wolcott.

NORTH DAKOTA

Anastacia Rohde, Drake.
Charles E. Watkins, Dunseith.
George Hummell, Gackle.
William R. Jordan, Luverne.
Helen J. Beaty, Manning.
Flora Bangasser, Norma.
Marie A. Borrud, Ross.

OHIO

Charles C. Shaffer, Alliance.
Samuel F. Rose, Clarington.
Charles H. Rice, Hamden.
William H. Hunt, Mechanicsburg.
Mayme Pemberton, Roseville.

Roy Heap, St. Marys.
Nellie S. Wilson, Somerset.
Arden E. Holly, Woodville.

OKLAHOMA

Manford Burk, Hooker.

HOUSE OF REPRESENTATIVES

FRIDAY, JANUARY 23, 1931

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Our Father in Heaven, we thank Thee for the words, "Cast your care upon God, for He careth for you." Impress us that abiding happiness is not only a possibility but a duty. That we can live above fret and worry are realities in human experience. O keep us from that which lowers the level of life and breeds confusion, for "though the earth be removed and though the mountains be carried into the midst of the sea" we need not fear because God is our Father and He will not permit any permanent ill to befall His children. Continue to endow us with good health and a high average of thought and with all those virtues that make life worth while. To-day and every day help us to live trustful, tranquil lives, meeting storm with calm, adversity with fortitude, defeat with faith, and may we always have a place in the everlasting arms. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Craven, its principal clerk, announced that the Senate had passed, with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H. R. 15592. An act making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1931, and for prior fiscal years, to provide urgent supplemental appropriations for the fiscal year ending June 30, 1931, and for other purposes.

INTERIOR DEPARTMENT APPROPRIATION BILL

Mr. GARNER. Mr. Speaker, may I propound a parliamentary inquiry?

The SPEAKER. The gentleman will state it.

Mr. GARNER. Is the Interior Department appropriation bill in the House or in the Senate?

The SPEAKER. The Interior Department appropriation bill is on the Speaker's table.

INVALID PENSIONS

Mr. NELSON of Wisconsin. Mr. Speaker, I call up the bill (H. R. 15930) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war, and I ask unanimous consent that this bill be considered in the House as in Committee of the Whole. This is the omnibus pension bill.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the bill.

This bill is a substitute for the following House bills referred to this committee:

H. R. 1534. Rebecca H. Cook.
H. R. 1555. Anna Brubaker.
H. R. 2712. Mattie Fields.
H. R. 4987. Lillie A. Green.
H. R. 6669. Justina A. Zeller.
H. R. 6702. Phebe A. Hereld.
H. R. 7726. Lizzie Holzworth.
H. R. 7907. Anna M. Noblitt.
H. R. 8719. Annie Garland.
H. R. 10685. Sarah R. Rodkey.
H. R. 10735. Lillie H. Rice.
H. R. 11245. Sarah C. Hubler.
H. R. 11655. Rosetta Hamilton.
H. R. 11740. Phoebe J. Hanes.
H. R. 11741. Susan Barlow.
H. R. 11944. Mary P. De Witt.
H. R. 12180. Mary Jane Phumphrey.
H. R. 12421. Ella Ellis.
H. R. 12451. Sarah Frandle.
H. R. 12536. Elizabeth Powell.
H. R. 12558. Emma J. Williams.
H. R. 12699. Elise Scheufler.
H. R. 12702. Fannie C. Dwelle.
H. R. 12731. Amanda C. Sowers.
H. R. 12752. Montry Miller.
H. R. 12767. Sarah J. Rowe.
H. R. 12956. Hannah Andress.
H. R. 13097. Addie V. Gardner.
H. R. 13113. Bettie Carr.
H. R. 13120. Mary L. Baker.
H. R. 13243. Valdora V. Munson.
H. R. 13287. Nancy Jane Crawford.
H. R. 13317. Mary Ellen Mead.
H. R. 13318. Pearl Phillips.
H. R. 13319. Mary A. Mason.
H. R. 13323. Emeline Peck.
H. R. 13334. Emily Connelly.
H. R. 13335. Annie Roe.
H. R. 13338. Asenath Carr.
H. R. 13341. Martha Hawkins.
H. R. 13344. Catharine Stakebake.
H. R. 13348. Elizann Nice.
H. R. 13350. Martha A. Brown.
H. R. 13352. Sarah E. Cassady.
H. R. 13371. Badora E. Harlan.
H. R. 13372. Margaret S. Myers.
H. R. 13373. Rachel Yeager.
H. R. 13377. Minerva N. Hough.
H. R. 13378. Sarah R. Hurst.
H. R. 13380. Julia Close.
H. R. 13381. Martha E. Bloom.
H. R. 13383. Emma Shank.
H. R. 13384. Elizabeth Beatty.
H. R. 13385. Kate J. Ruff.
H. R. 13386. Mary L. DeBolt.
H. R. 13387. Annie Jane Michael.
H. R. 13389. Hannah Bittner.
H. R. 13396. Catherine Leake.
H. R. 13397. Caroline Leff.
H. R. 13398. Mary E. Knisely.
H. R. 13400. Adaline Garber.
H. R. 13402. Harriet J. Gates.
H. R. 13403. Mary Catherine Calhoun.
H. R. 13408. Augusta Draeger.
H. R. 13411. Julia A. Commons.
H. R. 13425. Phebe Simmons.
H. R. 13433. Hannah L. Andrews.
H. R. 13446. Anna Smith.
H. R. 13465. Pearl E. Essex.
H. R. 13468. Susana Mann.
H. R. 13472. Sarah E. Atchley.
H. R. 13478. Mary J. Tryon.
H. R. 13479. Julia Wing.
H. R. 13480. Mary E. Earll.
H. R. 13482. Emma G. Lewis.
H. R. 13484. Emma Adams.
H. R. 13485. Ida V. Forbes.
H. R. 13490. Amelia M. Ransom.
H. R. 13496. Sarah Phillips.
H. R. 13498. Maggie E. Kulp.
H. R. 13500. Ella Coffey.
H. R. 13508. Delphine Le Comb.
H. R. 13511. Elizabeth Brown.
H. R. 13589. Josephine Allison.
H. R. 13592. Sarah E. Rich.
H. R. 13593. Sarah E. Johnson.
H. R. 13594. Amanda E. Dunning.
H. R. 13595. Scymantha E. Cremeens.
H. R. 13596. Clarissa J. Barber.
H. R. 13598. Dorothea Wunderlich.
H. R. 13599. Nancy A. Fowler.
H. R. 13600. Ida M. Yetman.
H. R. 13602. Emma Snook.
H. R. 13604. Rebecca B. North.
H. R. 13606. Rachel Fitzgerald.
H. R. 13609. Margaret J. Hoover.
H. R. 13614. Asaneth Geho.
H. R. 13621. Caroline Fesler.
H. R. 13628. Melvina J. Rhodes.
H. R. 13629. Rebecca J. Threlkeld.
H. R. 13630. Laura L. Flickinger.
H. R. 13632. Lucinda Clevenger.
H. R. 13633. Mary C. Kessler.
H. R. 13666. Sarah E. Bullock.
H. R. 13668. Sarah E. Cannon.
H. R. 13670. Charlotte Fowles.
H. R. 13671. Loretta J. Haines.
H. R. 13672. Louise Sergel.
H. R. 13673. Elizabeth McCoy.
H. R. 13677. Arlina F. DeLaplain.
H. R. 13678. Ann S. Shephard.
H. R. 13679. Jane McDowell.
H. R. 13680. Ida M. Rundlett.
H. R. 13681. Lizzie Buttles.
H. R. 13686. Zachariah T. Iler.
H. R. 13688. Hattie Brougham.
H. R. 13690. Mary E. Wemple.
H. R. 13691. Amanda F. S. Ward.
H. R. 13692. Mary Gutman.
H. R. 13700. Nora A. Tufts.
H. R. 13701. Emilie Umbreit.
H. R. 13705. Bulah Reddick.
H. R. 13709. Anna S. Hogle.
H. R. 13711. Amelia Eisenbeis.
H. R. 13712. Sarah Kidney.
H. R. 13729. Jennie M. McDermond.
H. R. 13731. Mary F. Lord.
H. R. 13742. Inez M. Brigham.
H. R. 13744. Permelia P. Cull.
H. R. 13745. Eliza S. Aber.
H. R. 13750. Margaret S. Wood.
H. R. 13751. Effie Sullivan.
H. R. 13752. Martishia D. Ivey.
H. R. 13756. Jennie M. Hughes.
H. R. 13757. Malsina Brown.
H. R. 13758. Sarah P. Hawkins.
H. R. 13760. Sallie Brown.
H. R. 13762. Mary A. Cummings.
H. R. 13763. Mary F. Hively.
H. R. 13768. Jane Tinkham.
H. R. 13770. Nancy A. Ware.
H. R. 13780. Rachel Armstrong.
H. R. 13781. Mary E. Appleby.
H. R. 13786. Mary J. Howard.
H. R. 13789. Louise Noblet.
H. R. 13794. John Smith.
H. R. 13797. Mary E. McDole.
H. R. 13802. Rosett H. Piper.
H. R. 13806. Martha McCracken.
H. R. 13809. Mary C. Rose.
H. R. 13811. Mary E. Gibson.
H. R. 13827. Susanna Leggett.
H. R. 13835. Mary C. Miller.
H. R. 13837. Emily A. Whitson.
H. R. 13839. Christena Maxwell.
H. R. 13841. Esther A. Kelsey.
H. R. 13846. Melissa J. Blowers.
H. R. 13847. Emily E. Brashears.
H. R. 13861. Ella F. Buffum.
H. R. 13876. Eva P. Brown.
H. R. 13881. Mary A. McCormick.
H. R. 13884. Mary Ellen Booth.
H. R. 13889. Hiram Andrews.
H. R. 13895. Sarah H. Dow.
H. R. 13901. Nellie K. McBee.
H. R. 13907. Irvin R. Rose.
H. R. 13908. George Washington.
H. R. 13909. Elizabeth Warmbrodt.
H. R. 13911. William H. Hauenstein.
H. R. 13918. Susie Tucker.
H. R. 13922. Mary B. Bybee.
H. R. 13928. Mary E. Townsley.
H. R. 13929. Lucy E. Black.
H. R. 13930. Lucinda Thompson.
H. R. 13936. Frances M. Turney.
H. R. 13938. Hannora Keley.
H. R. 13939. Hannah E. Frisbie.
H. R. 13941. Rebecca Ettinger.
H. R. 13943. Hulda Frances Rogers.
H. R. 13956. Maggie Bowdre.
H. R. 13959. Emma Pilate.
H. R. 13962. Ella S. Outcalt.
H. R. 13972. Sarah E. Trunick.
H. R. 13973. Jerusha A. Babbitt.
H. R. 13975. Nancy A. Douglass.
H. R. 13981. Maggie Rilea.
H. R. 13987. Anise Buchanan.
H. R. 13993. Rose M. Johnson.
H. R. 14006. Louisa R. Deibert.
H. R. 14017. Josephine J. McCracken.
H. R. 14088. Florence L. McMechan.
H. R. 14092. Effie E. Milton.
H. R. 14093. Roeana M. Bass.
H. R. 14096. Persis A. Miller.
H. R. 14097. Jennie Wainer.
H. R. 14098. Sabina O. Davis.
H. R. 14099. Martha J. Patterson.
H. R. 14100. Elizabeth Snider.
H. R. 14102. Mary A. C. Liston.
H. R. 14107. Ellen H. Lincoln.
H. R. 14111. Marion A. Mack.
H. R. 14114. Marie Louise Bellrose.
H. R. 14117. Emma M. Brown.
H. R. 14118. Clara H. Stuttz.
H. R. 14121. Ida M. King.
H. R. 14123. Matie L. Frisbie.
H. R. 14149. Laura B. Norris.
H. R. 14177. Agnes Taylor.
H. R. 14178. Harriett Davis.
H. R. 14182. Malinda J. Willis.